

CLERK'S COPY.

Volume I TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 319

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

GEENEY CALIFORNIA LUMBER COMPANY

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR HABEAS CORPUS FILED AUGUST 12, 1945
WRIT GRANTED OCTOBER 22, 1945

No. 10787

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

CHENEY CALIFORNIA LUMBER COMPANY,
Respondent.

SUPPLEMENTAL
Transcript of Record

Upon Petition for Enforcement of an Order of the
National Labor Relations Board

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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BOARD'S EXHIBIT No. 1-b

**United States of America
Before the National Labor Relations Board
Twentieth Region
Case No. 20-C-1195**

**In the Matter of
CHENEY CALIFORNIA LUMBER COMPANY
and**

**LUMBER & SAWMILL WORKERS,
LOCAL 2647.**

COMPLAINT

It having been charged by Lumber & Sawmill Workers, Local 2647, that Cheney California Lumber Company, herein called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth in the National Labor Relations Act, 49 Stat. 449, herein called the Act, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twentieth Region as agent for the Board designated by the Board's Rules and Regulations, Series 2, as amended, Article IV, Section 1, hereby issues its Complaint and alleges as follows:

I.

Cheney California Lumber Company is, and at all times herein mentioned has been, a California corporation engaged in the operation of a lum-

ber mill near Greenville, California, herein referred to as the respondent's Greenville mill. Respondent is engaged at its Greenville mill in the manufacture, sale, and distribution of lumber and lumber products, including railroad ties.

II.

Respondent, in the course and conduct of its business causes, and has continuously caused, a substantial amount of machinery, materials, and supplies used by it at its Greenville mill to be purchased and transported in interstate commerce from and through states of the United States other than the State of California to its Greenville mill, and causes, and has continuously caused, a substantial amount of the products manufactured, sold, and distributed by it to be sold and transported in interstate commerce from its Greenville mill to and through states of the United States other than the State of California.

III.

Respondent, in the course and conduct of its business, sells, and at all times herein mentioned has sold, large quantities and valuable amounts of the railroad ties manufactured by it at its Greenville mill, to the Western Pacific Railroad Company and to the Southern Pacific Company. The Western Pacific Railroad Company uses the railroad ties purchased by it from respondent on the railroad beds over which it operates passenger and freight trains in interstate commerce from the city of Oak-

land, California, through the states of Nevada and Utah to Salt Lake City, Utah. The Southern Pacific Company uses the railroad ties purchased by it from respondent on the railroad beds over which it operates passenger and freight trains in interstate commerce from the city of Oakland, California, through the states of Nevada, Arizona, and New Mexico, to El Paso, Texas; from Oakland, California, to Portland, Oregon; and from Oakland, California, through various states of the United States to Chicago, Illinois. The Western Pacific Railroad Company and the Southern Pacific Company each transport large quantities and valuable amounts of the railroad ties purchased from respondent to points and places outside of the State of California. All of the railroad ties purchased by the Western Pacific Railroad Company and the Southern Pacific Company from respondent are used in connection with the interstate railroad systems operated by each of said railroads.

IV.

Lumber & Sawmill Workers, Local 2647, affiliated with the American Federation of Labor, herein called the Union, is a labor organization within the meaning of Section 2, sub-division 5 of the Act.

V.

Respondent, through its officers, agents, and employees, during approximately September and October of 1942, informed its employees that respondent objected to their joining the Union and that

respondent might close the mill if the Union succeeded in organizing the employees; and during March of 1943, questioned its employees regarding their union affiliations, and again advised its employees that respondent objected to their joining the Union and that they would be better off if they did not join the Union, but instead would discuss their problems with respondent through a committee of employees.

VI.

Respondent, through its officers, agents, and employees, discharged Clayton Block and Ira Ware on or about March 19, 1943 and Leslie Allen and Lindsay Glenn on or about May 21, 1943, because of their membership in and activities on behalf of the Union and at all times since said dates has refused, and now refuses, to reemploy said employees. Respondent discharged Allen and Glenn for the further reason that respondent desired thereby to influence, and did influence, a Board election scheduled for and held on May 22, 1943 for the purpose of determining whether respondent's employees desired to be represented for collective bargaining purposes by the Union.

VII.

By the acts described in Paragraph VI above, respondent has discriminated and is discriminating in regard to the hire and tenure of employment of the employees named above in Paragraph VI, there-

by discouraging membership in the Union and respondent did thereby engage in and is thereby engaging in, unfair labor practices within the meaning of Section 8, sub-division 3 of the Act.

VIII.

By the acts described in Paragraphs V and VI above and by each of said acts, respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act, and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8, sub-division 1 of the Act.

IX.

The activities of the respondent described in Paragraphs V, VI, VII, and VIII, occurring in connection with the operations of the respondent described above in Paragraphs I, II, and III, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

X.

The acts of respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8, sub-divisions 1 and 3, and Section 2, sub-divisions 6 and 7 of the Act.

Wherefore, the National Labor Relations Board on the 26th day of August, 1943, issues its Complaint against Cheney California Lumber Company, a corporation, respondent herein.

MARTIN WAGNER

Regional Director

Twentieth Region

National Labor Relations Board

[Seal]

[Title of Board and Cause.]

ANSWER

Respondent, Cheney California Lumber Company, answering the above entitled complaint, admits, denies and alleges:

I.

Admits paragraphs I and IV.

II.

Denies paragraphs II, V, VI, VII, VIII, IX and X and each and every allegation contained therein.

III.

Respondent has no information sufficient to form a belief as to the truth of the allegations contained in Paragraph III and therefore denies the same and each and every allegation contained therein.

As a further and separate answer and defense, Respondent complains and alleges as follows:

I.

Cheney California Lumber Company is, and at all times herein mentioned has been, a California corporation engaged in the operation of a lumber mill near Greenville, California, herein referred to as the respondent's Greenville mill. Respondent is engaged at its Greenville mill in the manufacture, sale, and distribution of lumber and lumber products, including railroad ties.

II.

Respondent, in the course and conduct of its business, sells, and at all times herein mentioned has sold, railroad ties manufactured by it at its Greenville mill, to the Western Pacific Railroad Company and to the Southern Pacific Company. All said sales were made F.O.B. Greenville, California and delivered to said railroads within the State of California.

III.

Respondent, in the course and conduct of its business, sells, and at the times herein mentioned has sold, railroad ties and lumber for delivery outside the State of California in quantities not in excess of eight per cent of its total sales or shipments.

IV.

Respondent has never itself, nor through its officers, agents or employees during any of the times

mentioned in the above entitled Complaint, nor at any other times, objected to its employees joining the Union nor questioned the Union affiliations of its employees. The Respondent has at all times herein mentioned offered to accept and still offers to accept any union organization acceptable to the majority of its employees to be decided by an impartial Board election.

V.

Respondent discharged Clayton Block on or about March 19, 1943 for reason of his repeated failure to report for work on occasions too numerous to mention. Respondent discharged Ira Ware on or about March 19, 1943 for reasons of willful failure and refusal to do the work assigned to him, thereby causing undue hardship on fellow employees. Respondent discharged Leslie Allen and Lindsay Glenn on or about May 21, 1943 for willful disregard of Respondent's orders and performing their work in such a manner as to cause the breakdown of machinery and the endangering of lives of fellow employees.

VI.

Respondent has never discriminated in regard to the hire and tenure of employees but has hired persons known to Respondent to be members of the Union and has offered all employees, union or otherwise, the same privilege of overtime work and wage increases.

VII.

That on or about the 22nd day of May, 1943, the Respondent agreed to hold a consent Board election to determine whether Respondent's employees desired to be represented for collective bargaining purposes by the Union. Said election resulted in a tie vote, sixteen votes for the Union and sixteen votes against the Union. Two additional votes cast and not counted were challenged by the Respondent for reasons that said votes were cast by persons no longer in the employ of Respondent, and two employees were prevented from voting by a representative of the Union and the Board, for reasons unknown to Respondent.

VIII.

Since said Board election of May 22, 1943, conditions have changed materially at the Greenville mill of Respondent. The manager and foreman have been replaced and are no longer with the Respondent company and many new persons have been employed at Respondent's Greenville mill, thus the results of the Board election of May 22, 1943 is not necessarily a true indication of the desires of the present employees to be represented for collective bargaining purposes. In fairness to its employees, Respondent desires another Board election to be held to determine the desires of its employees with regard to representation for collective bargaining purposes.

Wherefore, the Respondent answers the complaint of the National Labor Relations Board, this 18 day of September, 1943.

FRANCIS I. CHENEY

Treasurer

Cheney California Lumber Company

United States of America

Before the National Labor Relations Board

Case No. 20-C-1195

In the Matter of

CHENEY CALIFORNIA LUMBER COMPANY

and

**LUMBER AND SAWMILL WORKERS
LOCAL 2647.**

DECISION AND ORDER

On October 25, 1943, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist from the unfair labor practices found and take certain affirmative action, as set out in the copy of the Intermediate Report attached hereto. None of the parties filed exceptions or briefs, or requested oral

argument before the Board at Washington, D. C. The Board has considered the rulings of the Trial Examiner at the hearing and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Cheney California Lumber Company, Greenville, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Lumber and Sawmill Workers Local 2647, affiliated with the American Federation of Labor, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of their employment:

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose

of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer Clayton Block, Ira Ware, Leslie Allan, and Lindsay Glenn immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges;

(b) Make whole Clayton Block, Ira Ware, Leslie Allan, and Lindsay Glenn for any loss of pay they have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Post immediately in conspicuous places in and about its sawmill plant located at Greenville, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1(a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2(a) and (b) of this Order; and (3) that the respondent's employees are free to become and remain members of Lumber and Sawmill

Workers Local 2647, affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of his membership or activity in that or any other labor organization;

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 30 day of December, 1943.

[Seal]

GERARD D. REILLY

Member

JOHN M. HOUSTON

Member

National Labor Relations Board

[Title of Board and Cause.]

Mr. John Paul Jennings, for the Board,
Mr. Francis Cheney, of Medford, Ore.,
for the respondent.

INTERMEDIATE REPORT

Statement of the Case

Upon a charge duly filed June 1, 1943 by Lumber and Sawmill Workers, Local 2647, affiliated with the American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director

for the Twentieth Region (San Francisco, California), issued its complaint dated August 26, 1943, against Cheney California Lumber Company of Greenville, California, herein called the respondent, alleging that the respondent has engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notices of hearing thereon, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged, in substance, that the respondent: (1) discharged Clayton Block and Ira Ware on or about March 19, 1943, and Leslie Allan and Lindsay Glenn on or about May 21, 1943, and has at all times since said dates refused and failed to reinstate said employees because of their membership in and activities on behalf the Union; discharged Allan and Glenn for the further reason that the respondent desired thereby to influence, and did influence, a Board election scheduled for, and held on May 22, 1943, for the purpose of determining whether the respondent's employees desired to be represented for collective bargaining purposes by the Union; (2) during approximately September and October 1942, informed its employees that it objected to their joining the Union, and that it might close the mill if the Union succeeded in organizing the employees; during March 1943, questioned its employees regarding their union affiliations, and

again advised its employees that it objected to their joining the Union and that they would be better off if they did not join the Union; but instead should discuss their problems with the respondent through a committee of employees; and (3) by the acts above described, the respondent has interfered with, restrained, and coerced its employees and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Subsequent to the hearing and on or about September 26, 1943, the respondent filed its answer¹ in which it denied generally the commission of any unfair labor practices, and alleged affirmatively that it discharged Block, Ware, Allan and Glenn for cause.

Pursuant to notice, a hearing was held at Greenville, California, on September 14 and 15, 1943, before Peter F. Ward, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues, was afforded all parties. At the close of the hearing, counsel for the Board made a motion, without objection, that the pleadings in the

(1) Up to the commencement of the hearing the respondent had filed no answer but requested and was granted the privilege of filing a formal answer after the close of the hearing.

proceedings be amended to conform to the proof. The motion was granted by the undersigned. Oral argument before the undersigned was waived by the parties. While all parties were afforded an opportunity to file briefs with the undersigned, none has been received.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes, in addition to the above, the following:

FINDINGS OF FACT

I. The business of the respondent

The respondent is a California corporation, organized early in 1942. It operates a sawmill near Greenville, California, where it is engaged in the manufacture, sale and distribution of lumber and lumber products, including railroad ties and stud-ding. Its principal sales office is located at Tacoma, Washington. During the year ending June 30, 1943, the sales of the respondent amounted to approximately \$285,000. During the same period the respondent manufactured approximately 17,000,000 board feet of lumber. Approximately 8 percent of such total sales was of products sold and delivered outside the State of California. The balance of such sales was of products sold and delivered F.O.B. Greenville. Its principal manufactured product consists of railroad ties which are sold to the Western Pacific and the Southern Pacific railroads, with the preponderance of such sales going to the Western Pacific Railroad. B. B. Cheney, the respondent's president, testified that the respondent has contracts

for the sale of ties with "most all the transeontinental railroads in this country."

II. The organization involved

Lumber and Sawmill Workers, Local 2647, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the respondent.

III. The unfair labor practices

A. Interference, restraint, and coercion

The respondent first began operations at its Greenville, California sawmill early in 1942. The owners of the respondent corporation also operate the Cheney Lumber Company, Inc., of Tacoma, Washington, and other companies. Lionel Pease who had operated a sawmill for one of the other Cheney companies, was made general manager and put in charge of the respondent's Greenville mill.

In or about September 1942, Alvin Waitts, employed as an edgerman, undertook to organize the respondent's employees on behalf of the AFL. He succeeded in having 17 or 18 employees sign union application cards.

On or about September 20, Pease, having learned of the union activity in the sawmill, called the employees together after working hours and addressed them concerning the Union. In this connection, Waitts, credibly and without contradiction, testified:

Q. What did Mr. Pease say to you at that time?

A. He told us he'd rather we wouldn't join no Union. That he'd rather just have a one big happy family down there and we'd work it out with us and himself and the Company.

Q. Do you remember what evel (else) he had to say?

A.⁹ He told us that he'd pay us the Union scale and if we did join the Union that there was some was overpaid the Union scale and they would automatically have to come down to the Union scale.

Subsequently, Waitts asked Pease what he had against the Union and the latter replied, "Well, —I'll tell you. I don't like them, and—I don't want a damn thing to do with them." Waitts further testified:

Q. (By Mr. Jennings) Did Mr. Pease have anything further to say or did you have anything further to say at that time?

A. He told me—or, he had a kind of a story that if they [unions] got into a strike somewhere else that we'd have to kick in, you know and help *same* them, and all of that; and oh, that is about all he said at that time.²

(2) Pease was not called as a witness and all the testimony of this and succeeding witnesses who testified concerning statements and conduct attributed to Pease stands uncontradicted. The record discloses that Pease is no longer employed at the respondent's Greenville mill. Its failure to produce Pease as a witness is discussed below. See footnote No. 18 *infra*.

Harold Norberg, an employee who was present at the meeting, testified:

Q. Now, what did Pease say at that time?

A. Well, he brought the Union up the first thing; then he mentioned that he understood we was wanting a Union in there and he said he really didn't see why we needed any. He'd pay union scales and I don't remember if that was the time he granted seniority or not. I believe we had two meetings.

Lindsay Glenn, an employee, testified that in 1942 he "was fighting the union"; that at such meeting he heard Pease state: "I understand that you're trying to organize here,—I wanted to talk to all of you,—I pay top wages and—I don't want no union here. What we want to make out of this is something like a little family affair"; and that Pease continued, "I can't see what you want a union for, and pay out a dollar and a half a month or something like that."

At the time the above meeting was held Glenn worked from 12:00 noon until 8:00 o'clock p.m., as he filed saws after the mill closed down for the day. On the night of the meeting Pease and Glenn had a discussion concerning the Union, during which, according to Glenn, Pease stated: "Glenn, before I would operate under the Union, under the contract, I'd shut the god-damned thing down air tight." Employee Kenneth Blair testified that he was present at the time of Pease's speech. His version of the talk was as follows:

He just said that he didn't want a Union, and if there was anything that we wasn't satisfied with, to come to him and he'd see if he couldn't settle it with us without having a Union.

Employee William Beem, who was present at the Pease talk, testified:

Q. Do you remember what he [Pease] said?

A. Well, he said that he didn't care to have the Union started, said we (sic) were satisfied and didn't want it changed, he wanted it kept that way. Just like a big family there, and he hated to see the boys pay out hard earned money to keep up a union.

Following the meeting at which Pease had expressed his anti-union views, Beem talked to him in his office, and according to his testimony asked him "if he knew what he was doing in regards to fighting the Union" and testified that he [Pease] said "he didn't care much what he was doing. He was doing as his own duty—he was doing his duty."

Following the first meeting, above described, Pease held another meeting with the employees during which a discussion was had concerning wages and seniority. In this connection, Harold Norberg testified:

Q. And did he call the men together in the same fashion the second time?

A. Yes, and he told them that he'd grant them seniority and we decided that seniority was the main thing we wanted there because

there was a lot of the older men that weren't getting promoted the way they felt they should be and he said he'd see that they got seniority. So we told him well, if that was it we'd just drop the case of the Union.

Pease also suggested, according to Norberg, "that there should be a committee of three appointed to decide which ones should have seniority, which ones should have certain jobs and which ones were capable of handling them . . .".³ A committee composed of Jake Williams, Lindsay Glenn and Harry Major was appointed.

The committee subsequently held conferences with Pease in the latter's office, at one of which Pease submitted a working agreement which, Glenn testified, "looked good and [was] reported to all the men that it did."

As above stated Pease was not produced as a witness and the testimony of Waitts, Harold Norberg, Glenn, Blair and Beem, as set forth above, was not controverted or denied. Each of the above named witnesses appeared to be and impressed the undersigned as credible witnesses. From the above and upon the record it appears that the facts as testified to by said witnesses occurred substantially as testified to by them, and it is so found.

(3) Norberg did not fix the date of this second meeting. Glenn fixed it as having occurred in the spring of 1943. From all of the circumstances disclosed in the record the undersigned is of the opinion that such meeting was held before the seasonal shut-down of the mill, in 1942-3 and so finds.

After Pease had called the employees together as above set forth, and informed them that he did not want the Union in the mill, Waitts discontinued his organizational activities, because as he testified, "nobody would talk to me about the Union at all." "—They wouldn't talk union any more." Union activity became and remained dormant until on or about March 1943. At this time some of the employees had become dissatisfied with the numerous shut downs of the mill and were complaining of discrimination in the distribution of work.

On or about March 23, Boyd Wyatt, who was employed by the District Council of the Carpenters & Joiners, on behalf of the Lumber and Sawmill Workers, as an organizer, went to Greenville and undertook to organize the respondent's employees. The mill was not operating on March 24, and on that day Wyatt met a group of the employees in front of the local post office and found that, due to the fact that they felt they were being discriminated against, "they were just ripe to join the Union." Wyatt succeeded in signing up some sixteen employees to application cards in the course of thirty minutes on this occasion. By March 25, he had secured 3 to 5 additional signers and, on March 25 called on Pease and advised him that a majority of the mill employees had signed up in the Union, and asked Pease to negotiate a contract with the Union. Pease refused to do so and stated that he would rather have an election. According to Wyatt, Pease got "hot-headed" during the interview and

stated that he "would shut the God damned thing down . . . before he would let it go Union." Pease also stated that he doubted if the Union had a majority, whereupon Wyatt suggested that they call a National Labor Relations Board Examiner and have a cross-check of the cards against the mill pay roll. Pease countered with the suggestion that the matter be turned over to the Labor Board "so it could be carried out according to Hoyle." As is set forth below, an election agreement was subsequently entered into.⁴

Employee Ruel Smith testified credibly and without contradiction that he accompanied Wyatt when the latter called on Pease on March 25, and requested the latter to recognize the Union, which Pease refused to do. Smith took no part in the conversation but, on the same day when he asked Pease for his pay check in order that he could visit his brother at Pittsburg, California, who was about to be shipped over seas, Pease replied, "Okay, but I don't like to sign a union man's check."

As is set forth in detail in Section III B below, Ira Ware and Clayton Block, who each signed union application cards on March 24, were discriminatorily discharged. Ware was discharged on March 26 and Block on April 5.

(4) The testimony of Wiatts, Harold Norberg, Glenn, Blair, Bruce and Wyatt, above referred to is uncontroverted and, in the main, supported by corroborative testimony of other credible witnesses and circumstances.

During April 1943 Wyatt filed a Petition for Investigation and Certification under the provisions of Section 9(c) of the Act. Thereafter, a Field Examiner for the Board, went to Greenville, where an agreement was entered into between the Board, the Union, and the respondent for the holding of a consent election. The date of the election was first fixed as of June 2, 1943, but due to the intercession of Leslie Allan, employed as a lumber spotter, and other employees who objected to the long delay, an agreement was reached on May 19 to the effect that the election should be held on the following Saturday, May 22. At the time the new date for the election was fixed; Wyatt designated Lindsay Glenn as an observer on behalf of the Union. Glenn and Allan were employed together on a certain operation described below. On May 21, both were discharged under instructions from Ben Cheney, respondent's president. Their discharges are discussed in detail in Section III B below.

The election was held pursuant to the agreement on May 22 at which time the respondent challenged the votes of Glenn and Allan, on the ground that they had been discharged for cause and were no longer employees of the respondent. They cast challenged votes. The result of the election, without the Glenn and Allan votes being counted, was 16 to 16, a tie vote.

B. The discriminatory discharges

The complaint alleges in substance that the respondent discharged Ware, Block, Allan and Glenn

because of their union activities and that Allan and Glenn were also discharged for the further reason that the respondent desired to and did thereby influence the results of the Board election held May 22, and referred to above.

The answer alleges affirmatively and in substance that the respondent discharged Block on or about March 19, 1943, for "his repeated failure to report for work on occasion too numerous to mention"; that it discharged Ware on or about March 19, 1943 "for reasons of willful failure and refusal to do the work assigned to him, thereby causing undue hardship on fellow employees; and that it discharged Allan and Glenn for willful disregard of its orders and "performing their work in such a manner as to cause the breakdown of machinery and the endangering of lives of fellow employees." The facts concerning each of the discharges are considered below.⁵

During March 1943, Ware, Block, and Albert Norberg discussed and advocated the Union with other employees. Among others, this pro-union group had an argument with Herman Higday (who had succeeded Jake Williams as foreman in 1943), Joe Josephson, and George Christiansen.⁶ During

(5) The evidence and the records of the respondent reflect that Block was discharged on April 5, 1943 and that Ware was discharged on March 26, 1943.

(6) Higday and Christiansen had accompanied Pease when the latter went from the State of Washington to Greenville to take charge of the respondent's sawmill.

this argument, Higday stated, according to the uncontradicted and credited testimony of Albert Norberg, as follows:

He [Higday] says if we didn't like where we was working and trying to cause trouble is what they thought it was to get the Union in there, why we could go some other place.

A few days after Norberg, Ware and Block's argument with Higday and the others, Albert Norberg was called to the office by Pease, who advised him that he (Norberg), Ware and Block were talking too much, and that if he did not stop such talking he would have to let Norberg go.

When Harold Norberg, a brother of Albert, learned of Pease's threat to discharge the latter, he called on Pease concerning such threat. According to the undisputed and credited testimony of Harold Norberg, Pease said that Block, Ware and Albert Norberg were doing too much talking and that he had already decided that he was going to discharge Block and Ware, and he thought he would have to discharge Albert Norberg too, "if he didn't quit talking so much." With reference to Ware, Norberg quoted Pease as saying, "He was stirring up too much trouble trying to get the men organized." Norberg further testified that he told Pease, that ". . . I thought he better leave him [Albert] on there or else I didn't care whether I stayed either." As a result of Harold Norberg's talk with Pease, Albert was permitted to continue to work.⁷

(7) On the day of this conversation, Pease had so fully determined to also discharge Albert Nor-

berg that he had had prepared and delivered to Norberg, not only his current pay check, but a check

Block testified credibly, without contradiction and the undersigned finds, that he was first employed by the respondent in May 1942 and worked during the entire season, except during a period in July 1942 when he had an appendicitis operation. He worked continuously thereafter except for the seasonal shut-down during the winter of 1942-1943, and on March 18, 1943, he went to the hospital with an infected finger, where he remained until March 23, when he was discharged from the hospital. On March 24, while en route to the doctor's office, he passed the post office where a group of the employees were signing union application cards, and he too joined the group and signed a union card. Jake Williams, who had acted as foreman in 1942, was present near the group of signers at this time.

During the time Block was absent from work due to *his* infected finger he spent part of the time about the mill. He testified, without going into detail, that on one occasion Pease tried to "explain to us where he thought we was wrong about the Union," and that, on this occasion Foreman Higday

for the immediately preceding work which customarily was held up and paid the following week. Such payments in full were only made on the occasion of a discharge. Notwithstanding this, however, and entirely because of Harold Norberg's intercession, the discharge of Albert was not made effective.

referred to the "stir-up" about the Union as an "Oakie-flourish."

Block was released for duty by his doctor and returned to work on April 5. He was immediately sent to Pease by Higday. Pease advised him that he could use him no longer and discharged him, giving as his reason that his "work was no good." Block was given a termination slip which recited that the reason for the discharge was "Failure to do his work." Upon Block's protest, Pease later replaced the termination slip with another one which recited "To take a more essential job in logging industry for Alton Jacks." Block was subsequently employed by Jacks.⁸

Following Block's discharge, Wyatt called on Pease concerning the matter and asked why Block was discharged. Pease replied that he had "discharged Clayton Block because he was absent from work so much . . ."

Other than Block's testimony that Pease told him that he was discharged because his "work was no good"⁹ and the statement made by Pease to

(8) Actually, Block had made a tentative arrangement to go to work for Alton Jacks at such later date as Jacks' operation could use him, and intended to quit the respondent's employ within a few weeks, at the time he was discharged. The record does not reflect how or whether this information reached Pease, although Block testified that, when he was discharged he announced to a group of employees at the mill that "I didn't care if Lionel did fire me, that I was going to quit in a couple of weeks anyway, because I had a job with Mr. Jacks."

(9) This reason was not alleged in the answer, notwithstanding the answer was not prepared or filed until after the close of the hearing.

Wyatt that Block was discharged because he was "absent from work so much," there is no evidence to support the allegation of the answer that Block failed to report for work "on occasions too numerous to mention." While Pease was not produced as a witness, assuming arguendo that the respondent could not have produced Pease as a witness, it could have introduced employment records showing the days the mill operated and the days that Block was at work. This it did not do. The record discloses that Block was absent on two occasions when confined to a hospital and did not otherwise unduly absent himself from work, and it is so found. From the foregoing it is found that some days prior to April 5, 1943, while Block was absent because of illness, the respondent determined to discharge him because of his activities on behalf of the Union; that his work had not theretofore been a subject of criticism and that he had, in fact, been regular in his attendance at work except when sick and away from his work on instructions from his doctor, of which the respondent was fully advised, and that on his return to work on April 5, the respondent did, in fact discharge him for the reason that he had engaged in union activities and not for the other reasons above set forth.

Ware was first employed by the respondent on or about July 1, 1942 and worked continuously until the seasonal shut-down for the winter of 1942-1943. During the shut-down he was employed at Hurlong,

Minnesota, on a war job. Prior to March 1, 1943, Ware got in touch with Pease and asked him if it would be advisable to quit his Hurlong job and return for work at the mill. Pease replied, "I might not be able to put you on immediately, but [will] within a few days." Ware finished out the month at Hurlong and returned to Greenville about March 1, and shortly thereafter Pease returned him to work. Prior to his discharge Ware's work had never been criticized by Pease or by the foreman.¹⁰

Ware had been a member of the A. F. of L. for about 3½ years and during his entire employment with the respondent, consistently wore a union button. On March 24 he signed a further designation card with the Union at the post office, and assisted in having others sign application cards. He was one of the group of three composed of Albert Norberg, Block and himself who, shortly before, had argued with Higday, Josephson, Christiansen and other anti-union employees, on behalf of the Union. As found above, Pease complained to the Norberg brothers that Ware "was stirring up too much trouble about the Union." On March 26, Williams, the former foreman, asked Ware if those who had signed union cards had a right to back out if they wanted to, and was advised by Ware that he did not think so. On or about March 22, Ware made arrangements with Pease to go to Reno, Nevada, with his son who was seeking to join the

(10) These findings are based upon the credible and uncontradicted testimony of Ware.

United States Navy, and thus did not work from on or about March 21 until March 26. When Ware returned to work on March 26, Pease met him and told him that he would not need him any more. When Ware asked the reason for his discharge, Pease replied that Ware let the other men "on the pond" do all his work. Ware responded, "The reason you are letting me go is because you know I'm pretty heavily in these union activities." Pease replied "No." . . . "You can leave it to the boys." . . . "You left all your work for them to do, wouldn't put the logs up." However, the respondent produced no testimony to support this.

When Wyatt sought to learn the reason for Ware's discharge, Pease advised him "for failure to do his work," and that "one other man" had complained about Ware's work. Pease also advised Wyatt that he wanted to "can" Ware "before the Union came into existence" and that he was "doing it now because later, when the Union came in he wouldn't be able to." Ware got a job about a month after his discharge and had made efforts to get one prior to that time."

(11) Following his discharge Ware applied without success for employment at the other local mills, at least one of which could not employ him because it had not yet gone into production. He could have obtained employment in other communities but was unwilling to leave his home in Greenville for that purpose. He remained unemployed for about a month when he obtained a job in a local box factory and was still employed there at the time of the hearing.

Other than the foregoing, there is no evidence in the record to support the contention of the respondent that Ware was discharged for willful failure to do his work, "thereby causing undue hardship on his fellow employees." As above found, Pease was not produced as a witness nor were any of the "fellow employees" called to support the respondent's contentions.

In view of the above and the record and Pease's statement to the Norberg brothers that Ware talked too much and "was stirring up too much trouble trying to get the men organized," and in the light of the respondent's anti-union background, particularly as disclosed by Pease's actions, it is clear and the undersigned finds that Ware was discharged on March 26, for the reason that he engaged in union activities.

In order that the contentions of the parties concerning the discharge of Glenn and Allan may be discussed with some clarity, it is necessary to consider certain operations having to do with the "edger" on which they were jointly employed. An edger is operated directly by an edgerman, a lumber spotter and a strip catcher. The timber comes to the edgerman in "slabs" 8 feet long, by means of rolls and is fed onto an edger table about 7 feet wide. Here it is handled by a lumber spotter whose duty it is to spot the lumber against the straight edge (saws). He straightens the lumber on the chain (by which it is moved forward) in order that both sides may be trimmed as the lumber goes through the saw. A lumber spotter must also pull

out any "bad" lumber. From the edger the lumber, 2 x 4's in this case, goes to planer.

A strip catcher's duty is to catch the strips or edgings that are cut from the lumber (2 x 4's) and dispose of them in the proper place. Under the edger table and the big chain that transports the lumber is a "big" conveyer which carries refuse to the burner for disposal. Prior to the spring of 1943, all strips and bad lumber were thrown into the big conveyer, except that for a time when it was piled on "horses" to be trucked away and used for fuel.

Approximately in April 1943, the respondent constructed a second conveyer, called the "hog," which was built along the side of the edger table on which the strip catcher worked. The hog was elevated and carried strips and bad lumber to a point where the material is ground up or "hogged" and made ready for burning or disposal otherwise.

Short strips or short pieces of bad lumber if not caught or handled by either the strip catcher or lumber spotter, would "rake off" into the big conveyer and would on occasion catch on a "bucket" and cause the chain to break, unless a man was posted at a certain point on the big conveyer to abstract them.

The speed at which lumber may go through the edger is determined by the amount of lumber delivered to the edgerman. "If it comes in fast you have to shoot it through fast," and the strip catchers

have got to handle it." It was necessary at times for the lumber spotter to climb upon the edger table to get short strips. This could be done if lumber does not come through too fast. Subsequent to the time Glenn and Allan were discharged, a bell was installed for use by the strip catcher with which to notify the edgerman when the lumber started piling up. Also subsequent to the discharge of Glenn and Allan, a new conveyer chain was installed.

Glenn, who had worked at "sawmilling" some 15 to 20 years, was employed by the respondent in February 1942. He first worked at building the mill and repairing. After the mill went into operation he worked on different jobs and was eventually assigned to a yard job with a raise in pay. Thereafter he was assigned to fill different vacancies of absent employees as they occurred. He in effect became a utility man, and so continued until on or about April 1943. As found above he was opposed to the Union in 1942. He became a member of the committee proposed by Pease. During March 1943, he took time off to visit a son at San Francisco who is in the military service, and returned about March 27. Upon being advised that a majority of the employees of the respondent had joined the Union, he decided to do likewise and signed a union application card on March 27.

Glenn then talked with Pease. In this connection, Glenn testified:

Well, I says, "Lionel, she went Union while I

was gone." and he said "No." I said, "Yes, the majority signed up." And I said, "I signed up," and when I said that he said, "Well, Glenn!——"

He further testified that Pease contended the Union had not signed a majority, and when Glenn insisted to the contrary, Pease replied, "They just told you a go-damned (sic) lie to get you to sign." When Glenn informed Pease that he had seen the cards and told that he had signed, the conversation ended. Prior to his joining the Union, Pease was always friendly toward Glenn. Thereafter he would pass Glenn without speaking.

Upon his return from San Francisco, Glenn worked on the chain a day or two and then was assigned to the edger as a strip catcher. At about this time, Glenn sought to claim an oiling job through his claim of seniority, and in company with Harold Norberg, called on Pease on Sunday to discuss it. Pease said that he would lose four or five men if he gave the job to Glenn. Through Norberg's insistence Pease agreed that the men could vote on it on Monday, the following day. On Monday, Glenn canvassed the employees and explained the plan for a vote to them. Pease, however, refused to permit the vote to be taken and gave the oiler job to George Christiansen, who was actively opposed to the Union.

Glenn succeeded in signing 11 employees to union applications and was otherwise active on behalf of the Union. He wore his union button, which caused Foreman Higday to remark: "——that God-damned

button you got don't mean nothing, nothing but a damn fool would wear that anyway."

On May 19, and after the election referred to above was set for May 22, Wyatt designated Glenn as the Union's observer at the election. On May 20 Higday kept unusually close watch over Glenn and on a number of occasions accused him of throwing short strips in the big conveyer, a charge Glenn denied and suggested that Higday talk to Allan, who as is set forth below, had permission to use the big conveyer when necessary. President Cheney also kept a more or less close scrutiny over Glenn on this day. Glenn, who realized that he was being closely watched, exerted himself in an effort to properly perform his job.¹² Glenn's discharge on May 21 is discussed in conjunction with Allan's discharge set forth below.

Allan, a brother-in-law of employee Blair, was employed by Pease on or about April 15, 1943 following some correspondence between the parties. At the time he was employed he asked Pease if the job was "unionized or not," and Pease answered, "No." Allan stated that he was a "union member, and wanted to know." Allan added, "It won't interfere with my work." After working as a slasher

(12) The evidence reflects that, with the conveyer then in use, short strips falling or thrown on it frequently became caught and caused the conveyer chain to break unless a man was specially stationed to free them. This condition is intimately connected with the discharge of Glenn and Allan and is dealt with at length in conjunction with Allan's discharge.

for two days Allan took over the lumber spotter's job and thereafter worked on the edger table with Glenn. When he first started to work Allan threw all the strips into the big conveyer, the hog not having been installed. On occasion it was necessary for him to climb upon the edger table to recover short strips. This he could do if lumber was not coming through too fast.

After Allan had been at work for a time the hog conveyer was installed, after which he was instructed to and did put all "possible" strips into the hog conveyer. After the hog conveyer had been in operation for a time, the respondent caused the big conveyer to be "boxed" to the end that it would be impossible for strips to be thrown into it. As a result of such "boxing" short strips, not finding an outlet into the big conveyer, would cause the lumber to pile up, making it necessary for Allan to climb onto the table and release the piled-up lumber. Allan then told Higday that unless the floor was taken off the big conveyer "to where those short ones go through," he would quit. Higday refused to remove the floor and Allan did quit.

Thereafter the respondent assigned two of its "best men" to handle the lumber and determine whether it was necessary to take the floor out or not. On the following day Allan returned to the mill for his release and Higday asked him if he would take his job back. Allan replied that he would do so if he "could throw these strips under [into] the conveyer that it is impossible for me to

get in the hog, I'll take it back. Otherwise, no soap." Higday told him to take the job on those conditions and he did so. Thereafter neither Pease nor Higday ever told Allan not to throw strips into the big conveyer. He continued to use the big conveyer for strips that he was unable to put in the hog conveyer. He so used it on May 20, at the time when Higday was criticizing Glenn concerning the strips.¹³

Allan was a member of the United Brotherhood of Carpenters and Joiners when he was hired. On April 15 he signed a further designation with Local 2647. Prior to the scheduled election he was requested to solicit three employees for membership whom the Union "seemed to be afraid to approach." Allan talked to the three men and succeeded in signing one to a union application.

Allan was the "ringleader" of the group of employees who sought to have the election moved up from June 2 to May 22.

As a result of Higday's "raising the devil" with Glenn on May 20, he and Allan decided to discuss the matter in person with Cheney. Allan contacted Cheney and asked for an appointment. Cheney told Allan that he (Cheney) would see Pease and ad-

(13) These findings are based on the credible and uncontradicted testimony of Allan. Higday, though not shown to be unavailable, was not produced as a witness. Cheney, in his testimony, referred to Allan's conduct in this instance as "the kiddish fit" but did not dispute the fact that Allan returned to work under the conditions related above.

vise them what time Cheney could see them. Cheney later fixed the time for the meeting as 7:00 o'clock on the night of that day. Later Glenn concluded that "it wouldn't be worth while to talk to" Cheney, and Allan cancelled the date.

When Glenn and Allan reported for work on May 21, Higday sent them to the office to see Pease. When Pease arrived he told them that the strips they threw into the big conveyer caused a breakdown, but did not tell them they were fired. Cheney, however, did state that they were fired. Pease then issued termination slips to them which recited that each "left voluntarily." Many of the employees gathered around the office and threatened to go on strike, but returned to work after Glenn had advised them to do so.¹⁴

On May 22 Glenn acted as observer of the election as the Union's representative and both voted challenged ballots.

The respondent contends in substance and effect that Glenn and Allan were discharged for throwing strips into the big conveyer. In support of such contention Cheney testified that he personally requested them not to throw such strips into the big conveyer. Both Glenn and *and* Allan denied that result of the discharges, and did not return. Cheney made such a request. The undersigned does not credit Cheney's testimony in this regard.¹⁵

(14) Three employees did quit their jobs as a

(15) See footnote No. 19.

The record clearly discloses that Higday did accuse Glenn of putting short strips into the big conveyer and that in each instance Glenn told Higday that he was not putting the strips in such conveyer and advised Higday to talk to Allan. The credible evidence discloses that Allan was putting the short strips that he could not get into the hog conveyer into the big one, and that no one cautioned him against so doing. This was all pursuant to his arrangement with Higday as described above.¹⁶ On the evidence and the record, the undersigned is convinced and finds that Glenn did not throw any strips into the big conveyer on May 20, and that Allan did so only to the limited extent necessary.

The record discloses that it is not possible even with the new conveyer chain which the respondent installed in June 1943 and after the Glenn and Allan discharges, to keep strips out of the conveyer. Ernest Davis, who succeeded to Glenn's strip catcher job, called as a witness for the respondent, testified that the small strips that break up do fall through into the conveyer. Also, in this connection Waitts testified without dispute, "but the short ones that come out there, sometimes in spite of all

(16) It should be noted that the undisputed evidence discloses that at the time Allan quit his job, as above set forth, the big conveyer had been "boxed" over or floored so that it was impossible for strips to be thrown into it. Since it was possible for strips to be thrown into it on May 20, the flooring must have been removed, and the undersigned so finds.

you can do you can't keep them from it [conveyer]."

It is clear from the record and undisputed that the conveyer chain in question was an old one which broke down frequently both before and after Glenn and Allan worked on the edger table, and from causes other than and in addition to short strips being thrown into it. It is significant that since the discharge of Glenn and Allan a new conveyer chain has replaced the old one and a bell system has been added to permit the strip catchers to warn the edgerman when the lumber is coming through too fast.

In view of the foregoing and the record, it appears that the respondent's officers and agents, being opposed to the Union and seeking a means of influencing the election results, deliberately harassed Glenn by false accusations on May 20, and in order to deprive the Union of the benefit of their votes at the forthcoming election, on May 21 discharged Glenn and Allan because of their union activities and in order to adversely influence said election, and it is so found.¹⁷

C. Concluding findings

As found above Alvin Waitts during on or about September 1942 initiated a movement for the purpose of organizing the respondents' employees and

(17) At the time of the hearing Glenn was employed at the Bethlehem Shipyards, Alameda, California, and Allan was employed by Yuba Manufacturing Co. Benicia, California.

succeeded in procuring from the employees 17 or 18 signed applications for union membership. When Pease learned of the union activity, he called the employees together and advised them that he was opposed to having a union at the mill and preferred that they have "one big happy family" there instead. Pease stated that he would pay the union scale of wages and in effect he warned the men that since some were paid more than the union scale, their wages would be automatically reduced in the event the union came into the mill. He advised certain employees privately that if the union came in he would "shut the god-damned thing down." Pease told Waitts that in the event the Union came in and subsequently had strikes elsewhere the employees would have to "kick in" and help save them. As found above Pease held a second meeting at which he agreed to grant seniority to the mill employees and suggested that the employees select a committee to pass on questions of seniority. After the committee was appointed as suggested Pease submitted a proposed agreement, which "was better than the Union."

After Pease had voiced his opposition to the Union in September 1942, union activity discontinued completely and did not revive until about March 1943. At this time Pease again took steps to discourage such activity, first by the discharge of Ware and Block and subsequently by the discharge of Glenn and Allan. The latter discharge occurred on the eve of an election held on May 22

to determine whether the Union should be selected as the bargaining representative.

Also, as found above, Pease, Foreman Higday and former Foreman Williams made anti-union statements to a number of the employees none of which are denied in the record.¹⁸

The respondent offered no affirmative proof in

(18) Neither Pease, Higday or Williams, although not shown to be unavailable were called as witnesses. The record discloses that these three left the respondent's Greenville Mill in June 1943, and that Pease was employed for a time in one of the mills belonging to the Cheney family. The respondent at no time pleaded surprise or asked for a continuance of the hearing in order to secure the attendance of Pease or the former foreman named in the testimony herein. President Cheney testified that he did not know the whereabouts of Pease, but stated in substance, that he understood that Pease had planned to acquire a sawmill of his own. The Cheney's operate a number of mills in the Pacific coast states and have spent many years in the lumber industry. The undersigned is convinced that if the respondent had desired the presence of Pease and the foremen at the hearing herein, it would have had no difficulty in locating them and either had them attend the hearing or caused their depositions to be taken. In view of the fact that the respondent did not claim surprise or request a continuance and did not make arrangements to have them present, the undersigned is of the opinion and finds that the respondent would not expect Pease and the foremen to deny many of the statements and acts attributed to them, as above set forth. This conclusion is strengthened by the fact that the respondent offered proof and stressed the fact that the present general manager and foreman have engaged in no anti-union activities.

support of the reasons alleged in its answer for the discharge of Ware and Block. In support of its alleged reasons for the Glenn and Allan discharges it relies in the main on the testimony of President Cheney,¹⁰ who testified that he personally told Glenn and Allan not to throw strips into the big conveyer and that they nevertheless did so. The undersigned

(19) Cheney did not impress the undersigned as a credible witness. He denied having ever discussed the Union affiliation of the men with Pease or that he knew of Pease's activities in connection with the Union. The undersigned does not believe that Pease would have taken the steps which he did to stifle the union's efforts; grant them seniority; and propose an agreement without Cheney's consent or at least without his knowledge. It is improbable that Pease would grant seniority without telling Cheney of the fact that the men accepted the agreement for it in lieu of the Union, as was testified to by Harold Norberg.

La Fleur, the present manager who was at the mill in April 1943 installing the hog and other machinery, Manning, a sawyer who admitted his antagonism to the Union and Pettie, a planer man, all testified that Allan and Glenn had been instructed not to throw strips in the conveyer after the hog was installed. In view of Allan's undisputed testimony that Higday had authorized him to do so when necessary and the fact that he did so without objection from Higday, this testimony is not credited as to Allan being instructed to *reframe* from using the conveyer. On the contrary, it is found that Allan so used the conveyer by special permission from Higday. As to Glenn, it is found that he had been so instructed and that he followed such instructions at all times, although there was occasions over which Glenn had no control when strips would fall into the conveyer from the edger table.

is convinced that the operations of May 20 were no different than on other days, except that there was a premeditated effort on the part of Higday to harrass Glenn in order to have a pretext to justify his discharge prior to the election.

While the record discloses that Peace promptly accepted the suggestion that the consent election be moved up from June 2 to May 22, it also discloses considerable unrest existed among the employees, which unrest resulted in most of the men leaving their work upon learning of the discharge of Glenn and Allan on May 21.

Upon all the evidence and on all of the circumstances in this case, the undersigned is convinced and finds that by discharging Ira Ware on March 26, 1943, Clayton Block on April 5, 1943, *Linsay* Glenn and Leslie Allan on May 21, 1943, the respondent discriminated in regard to their hire and tenure of employment, thereby discouraging membership in the Union, and by the statements and activities of the General Manager, Lionel Pease, and its Foremen Herman Higday and Jake Williams,²⁰ the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the respondent set forth in Section III above, occurring in connection with the

(20) Jake Williams was a foreman during all of 1942 and a part of 1943.

operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that the respondent has engaged in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The undersigned has found that the respondent has discriminated in regard to the hire and tenure of employment of Clayton Block, Ira Ware, Leslie Allan, and Lindsay Glenn, thereby discouraging membership in the Union. In order to effectuate the policies of the Act, it will be recommended that the respondent offer to Clayton Block, Ira Ware, Leslie Allan, and Lindsay Glenn and to each of them, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and that it make them whole for any loss of pay they may have suffered by reason of the discrimination against them, by payment to each of them of a sum of money equal to the amount which each normally would have earned as wages during the period from the date of the discrimination against him, to the date of the offer of reinstatement.

ment, less his net earnings²¹ during such period.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Lumber and Sawmill Workers, Local 2647, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2(5) of the Act.

2. The respondent, by discriminating in regard to the hire and tenure of employment of Clayton Block, Ira Ware, Leslie Allan, and Lindsay Glenn, thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8(3) of the Act.

3. The respondent, by interfering with, restraining, and coercing its employees in the exercise of

(21) By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America*, Lumber and Sawmill Workers Union, Local 2590, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U.S. 7.

the rights guaranteed them in Section 7 of the Act, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8(1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2(6) and (7) of the Act.

Recommendations

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, Cheney California Lumber Company, and its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Lumber and Sawmill Workers, Local 2647, affiliated with the American Federation of Labor, or any other labor organization of its employees by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Offer to Clayton Block, Ira Ware, Leslie Allan, and Lindsay Glenn, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges;

(b) Make whole Clayton Block, Ira Ware, Leslie Allan, and Lindsay Glenn for any loss of pay they may have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money in the manner set forth in the above section entitled, "The remedy";

(c) Post immediately in conspicuous places in and about its sawmill plant located at Greenville, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1(a) and (b) of these recommendations; (2) that it will take the affirmative action set forth in paragraph 2(a) and (b) of these recommendations; and (3) that the respondent's employees are free to become or remain members of Lumber and Sawmill Workers Local 2647, affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of membership in or activity on be-

half of that or any other labor organization;

(d) Notify the Regional Director for the Twentieth Region in writing within ten (10) days from the receipt of this Intermediate Report, what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that it has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended, effective October 28, 1942—any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D.C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

Dated: October 25, 1943.

PETER F. WARD
Trial Examiner

No. 10787

In the United States Circuit Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

CHENEY CALIFORNIA LUMBER COMPANY,
Respondent.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Cir-
cuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U.S.C. §151 et seq.), respectfully petitions this Court for the enforcement of its order against respondent, Cheney California Lumber Company, Greenville, California, and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Cheney California Lumber Company and Lumber and Sawmill Workers Local 2647, Case No. 20-C-1195."

In support of this petition, the Board respectfully shows:

(1) The unfair labor practices which are the subject of the present proceeding occurred in the State of California within this judicial circuit. This Court therefore has jurisdiction of this petition by virtue of Section 10(e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board, on December 30, 1943, duly stated its findings of fact, conclusions of law and issued an order directed to the respondent, and its officers, agents, successors, and assigns. The aforesaid order provides as follows:

Order

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Cheney California Lumber Company, Greenville, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Lumber and Sawmill Workers Local 2647, affiliated with the American Federation of Labor, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to

their hire and tenure of employment or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer Clayton Block, Ira Ware, Leslie Allan, and Lindsay Glenn immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges;

(b) Make whole Clayton Block, Ira Ware, Leslie Allan, and Lindsay Glenn for any loss of pay they have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Post immediately in conspicuous places in and about its sawmill plant located at Greenville, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respond-

ent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1(a) and (b) of this Order: (2) that the respondent will take the affirmative action set forth in paragraphs 2(a) and (b) of this Order; and (3) that the respondent's employees are free to become and remain members of Lumber and Sawmill Workers Local 2647, affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of his membership or activity in that or any other labor organization;

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(3) On December 30, 1943, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Mr. Francis Cheney, respondent's attorney in Medford, Oregon.

(4) Pursuant to Section 10(e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent, and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence

and the proceedings set forth in the transcript, and upon the order made thereupon set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board and requiring respondent to comply therewith.

**NATIONAL LABOR RELATIONS
BOARD**

By MALCOLM F. HALLIDAY

Associate General Counsel

Dated at Washington, D. C., this 20th day of May, 1944.

District of Columbia—ss.

Malcolm F. Halliday, being duly sworn, states that he is Associate General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

MALCOLM F. HALLIDAY

Associate General Counsel

Subscribed and sworn to before me this 20th day of May, 1944.

[Seal]

JOHN E. LAWYER

Notary Public, District of Columbia

My Commission expires August 31, 1944.

[Endorsed]: Filed May 29, 1944. Paul P. O'Brien, Clerk.

[Title of Board and Cause.] - *

Pursuant to Section 6 of Rule 19 of the Court, the Board hereby submits to the Court the following statement of points upon which it intends to rely in the trial of the above-entitled cause:

I.

The National Labor Relations Act is applicable to respondent and the employees here involved.

II.

The Board's findings of fact are supported by substantial evidence. Upon the facts so found, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(1) and (3) of the Act.

III.

The Board's order is wholly valid and proper under the Act.

MALCOLM F. HALLIDAY

Associate General Counsel
National Labor Relations Board

Dated at Washington, D. C., this 23 day of May, 1944.

[Endorsed]: Filed May 29, 1944. Paul P. O'Brien, Clerk.

CCA No. 10787

ORDER TO SHOW CAUSE

United States of America—ss.

The President of the United States of America

To Cheney California Lumber Company, Greenville, California and Lumber & Sawmill Workers, Local 2647 U. O. Box 253, Greenville, California, Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 29th day of May, 1944, a petition of the National Labor Relations Board for enforcement of its order entered on December 30, 1943, in a proceeding known upon the records of the said Board as "In the Matter of Cheney California Lumber Company and Lumber and Sawmill Workers Local 2647, Case No. 20-C-1195" and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the

Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness the Honorable HARLAN FISKE STONE,
Chief Justice of the United States, this 29th
day of May in the year of our Lord one thousand nine hundred and forty-four.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

RETURN ON SERVICE OF WRIT

United States of America,—

Northern District of California—ss.

I hereby certify and return that I served the annexed Order to Show Cause on the therein-named Cheney California Lumber Company by serving M. A. Disch, manager by handing to and leaving a true and correct copy thereof with M. A. Disch personally at Greenville in said District on the 10th day of June, 1944.

GEORGE VICE

U. S. Marshal

By JOHN V. O'BRIEN

Deputy

RETURN ON SERVICE OF WRIT

United States of America,—

Northern District of California—ss.

I hereby certify and return that I served the annexed Order to Show Cause on the therein-named

Lumber & Sawmill Workers, Local 2647 by serving Ben Garfield *Secetary* of Union by handing to and leaving a true and correct copy thereof with Ben Garfield personally at Greenville in said District on the 10th day of June, 1944.

GEORGE VICE

U. S. Marshal

By JOHN V. O'BRIEN

Deputy

[Endorsed]: Filed June 14, 1944. Paul P. O'Brien,
Clerk.

Before the National Labor Relations Board

Twentieth Region

Case No. 20-C-1195

In the Matter of

CHENEY CALIFORNIA LUMBER COMPANY

and

LUMBER AND SAWMILL WORKERS

LOCAL 2647.

Town Hall,
Greenville, California,

September 14, 1943.

The above-entitled matter came on for hearing,
pursuant to notice, at 10:00 o'clock a.m.

Before:

Peter F. Ward, Trial Examiner.

Appearances:

John Paul Jennings, 1095 Market Street, San Francisco, California, appearing on behalf of the National Labor Relations Board.

Francis Cheney, Box 928, Medford, Oregon, appearing on behalf of the Cheney California Lumber Company. [1*]

B. B. CHENEY,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Jennings) Mr. Cheney, you are an officer [6] of the Respondent, Cheney California Lumber Company; is that correct?

A. Yes.

Q. What office do you hold?

A. President.

Q. When was the Cheney California Lumber Company incorporated approximately?

A. I think some time in 1942.

Q. May of 1942?

A. The early part of '42, yes.

Q. And where is it incorporated?

A. It's incorporated in the state of California.

Q. Now, is the Cheney California Lumber Company—strike that. In what business is the Cheney California Lumber Company engaged?

*Page numbering appearing at top of page of original certified Transcript of Record.

(Testimony of B. B. Cheney.)

A. The manufacturing of lumber.

Q. And where?

A. In Greenville, California.

Q. Operate a sawmill at Greenville?

A. Yes.

Q. And what types of lumber and lumber products do you manufacture?

A. Recutting principally railway ties and stud-ding.

Q. Is the Cheney California Lumber Company a subsidiary of some other corporation? [7]

A. It is not.

Q. Is it related in stock ownership with the Cheney Lumber Company, Inc., of Tacoma, Washington? A. No, it is not.

Q. It is not? A. No.

Q. Are any of the records of the Respondent, Cheney California Lumber Company, kept in Greenville? Sales records?

A. Sales records are all kept in Tacoma, Washington.

Q. And that is where the principal office of the Cheney Lumber Company, Inc., a Washington corporation, is located? A. That is right.

Q. Do you know, Mr. Cheney, approximately the dollar value of the sales of Cheney California Lumber Company during the period ending June 30, 1943? A. Approximately \$285,000.

Q. And board feet, approximately how much would that be?

(Testimony of B. B. Cheney.)

A. Approximately 17,000,000 board feet.

Q. Of that amount approximately what part was sold and transported outside of the state? That is, from the Greenville mill?

A. Approximately less than 8 per cent of the total.

Q. And in dollar value what would that be?

A. Well it would be 8 per cent of two hundred eighty-five, whatever that is. [8]

Q. Well, could you tell me in dollars, would it be twenty or thirty thousand dollars?

A. Well, multiply 8 per cent.

Mr. Francis Cheney: \$22,800.

Trial Examiner Ward: You may state that.

The Witness: Approximately \$22,000 in round figures.

Q. (By Mr. Jennings) And approximately how many board feet is that?

A. Well, 8 per cent of 17,000,000, whatever that is.

Q. The proportion is the same?

A. Yes, the same.

Q. Now—

A. Our board measure probably would be less, our 285,000 was the total sales and of that total sales there were 8 per cent that were sold out of the state. I wouldn't—maybe that wouldn't be the same proportion at that because the dollar and board measure may not run exactly proportionately. There might be a little variation but I took our percentage.

(Testimony of B. B. Cheney.)

Trial Examiner Ward: It would be approximately that?

The Witness: Yes.

Q. (By Mr. Jennings) Now, those figures are for the year beginning June 1942 and ending June 30th, 1943? A. That is right. [9]

Q. During the year 1942 and going up to June 30th of '43 did you sell any railroad ties to any railroads?

A. Well, we sold to the Western Pacific and Southern Pacific railroads.

Q. Do you know approximately how many railroad ties you sold to the Western Pacific railroad during the year 1942?

A. No, I don't remember the pieces.

Q. Would you say that approximately 30,000 railroad ties would be correct? That is the figure the Western Pacific gave me.

A. Well, it might be around there. I don't remember the exact figure. We were hurried for time and so much work up there that I had our bookkeeper working for the California corporation in Tacoma look up these figures and he gave me the total sales of two hundred eighty-five, that figure—went through the invoices and figured it out—the out-of-state shipments which he worked as a percentage came to 7.6 I think of the total sales. [10]

Q. (By Mr. Jennings) Along the line indicated by Mr. Francis Cheney, Mr. Cheney, would it be fair to say that the preponderance of your sales

(Testimony of B. B. Cheney.)

during the period of 1942 and the first six months of 1943 have been railroad ties to the Western Pacific railroad and the Southern Pacific Company?

A. That is right. I would say that is correct.

Q. The Western Pacific Railroad Company operates a railroad from Oakland, California to Salt Lake City, Utah; is that correct, Mr. Cheney?

A. Well, I don't know exactly where the line goes. I know they operate here in the State of California.

Q. Well, you know also that the main line runs up to Salt Lake City, Utah, don't you? [11]

A. Well, I didn't know that; no, I didn't.

Q. You didn't know that? A. No.

Mr. Jennings: Would you be willing to stipulate to that, Mr. Cheney?

Mr. Francis Cheney: Well, I don't think that that adds to it or is even necessary. I think that the court will take judicial recognition of the line of the railroad.

• Trial Examiner Ward: The trial examiner will take judicial notice of the fact that the Western Pacific Railroad and any railroad that connects with it, transcontinental railroad, is engaged in interstate commerce.

Q. (By Mr. Jennings) The railroad ties that you sell to the Western and Southern Pacific railroads are used in their railroad beds, aren't they?

A. They must be. I don't know where else they would use them.

(Testimony of B. B. Cheney.)

Q. They operate trains in interstate commerce over those railroad beds, isn't that correct?

A. I suppose they do.

Q. That is the purpose of the railroad bed, isn't it, to operate the trains over them?

A. Well, I would think that was quite obvious.

Q. You know that the ties that are sold to the Southern Pacific Company are also used in their railroad beds, isn't [12] that true?

A. Well, unless they use them for building cars or something.

Q. Well, you sell them for railroad ties, and that is the purpose for which they are used?

A. I think so.

Q. And you know that the Southern Pacific also operates a railroad which runs from Oakland, California, up to Portland, Oregon, and likewise from Oakland to Chicago, and the southern route——

Mr. Francis Cheney: I object, Your Honor, for the reason that he is not best able to testify to that fact and I think that for the purpose of the record we will admit that the Southern Pacific is engaged in interstate commerce and the Western Pacific is engaged in interstate commerce and that these are railroad ties and as far as we know they are used for the purpose for which they are purchased. However, we do not know just where those ties are put and whether they are put in the state of California or whether they are put in roadbeds outside the state of California and we will stipulate as to that.

(Testimony of B. B. Cheney.)

Trial Examiner Ward: That statement clears it up. I will sustain the objection. [13]

BOYD WYATT,

a witness called by and on behalf of the National Labor Relations Board: [15]

Trial Examiner Ward: Your name is what?

The Witness: Wyatt.

Direct Examination

Q. (By Mr. Jennings) What is your full name, please? A. Boyd James Wyatt.

Q. Wyatt, W-y-a-t-t? A. Yes, sir.

Q. Where are you employed at the present time?

A. Setzer Box Company, Greenville.

Q. Are you the Boyd Wyatt who signed the charge in this proceeding? A. Yes, sir.

Q. Do you hold any office in the charging Local?

A. Yes, sir. I'm it's secretary.

Q. And how long have you occupied that office?

A. This is the second term.

Q. How long is that? A. Two years.

Q. At the time you filed the charge did you hold any other office in the Lumber and Sawmill Workers' Union? [17]

A. I was International Representative of the Brotherhood of Carpenters and Joiners of America.

Q. And how long had you held the position of International Representative?

(Testimony of Boyd Wyatt.)

A. Approximately two months.

Q. And during what months was that?

A. April, May and the first part of June.

Q. Of 1943? A. Yes, sir.

Q. And prior to that time, that is, during the early part of '43 did you hold any other position in the United Brotherhood of Carpenters and Joiners? A. No, sir.

Q. Were you employed in organizational efforts during that time? A. Yes, sir.

Q. That is during the early part of '43 before you became—before you were put on the payroll?

A. I was working for the Northern California District Council prior to April of '43.

Q. And how long had you been employed by the Northern California District Council?

A. Oh, approximately a month.

Q. That is the District Council of the Carpenters and Joiners, isn't that true? [18]

A. Of the Lumber and Sawmill Workers.

Q. During the period of time that you were employed by the District Council did you make any effort to organize the employees of the Cheney Lumber Company? A. Yes.

Mr. Jennings: I will refer to the Company as Cheney in the record. I think that would be simpler.

Trial Examiner Ward: You may.

Q. (By Mr. Jennings) Now, when did you start to speak to the employees out at Cheney's concerning the joining the Union?

(Testimony of Boyd Wyatt.)

A. Well, I really got busy on approximately March 24th, 23rd, 24th and 25th.

Q. Of 1943? A. Yes, sir.

Q. And did you succeed in signing up a number of the employees? A. Yes.

Q. Any particular date when you signed up the greater number of them? A. March the 24th.

Q. And will you tell me what you did on that day?

A. On March the 24th the majority of the men at the mill were congregated over in front of the post office and the drug store. They were quite irate at not being employed full [19] time when some of the men were working six and seven days a week, very good opportunity for me to sign up what men there was there. I succeeded in signing up approximately sixteen or seventeen in the course of thirty minutes.

Q. They signed applications for membership in the Lumber and Sawmill Workers Union?

A. Yes, sir.

Q. Do you remember whether or not Clayton Block signed an application at that time?

A. Yes, he did.

Q. Do you recall whether or not Ira Leown Ware signed an application at that time?

A. Yes, he did.

Q. Did either one of them, Ira Ware or Clayton Block, assist you in your efforts to sign up the other men? A. Ira Ware did.

(Testimony of Boyd Wyatt.)

Q. Do you recall that thereafter—strike that. Were Ira Ware and Clayton Block working at the time they signed applications, so far as you knew?

A. As far as I knew they were working.

Q. Did you hear some time thereafter that they had been fired?

A. Yes.

Q. Now, do you recall having gone down to the mill and spoken with Mr. Pease concerning recognition of the Union? [20] Answer yes or no.

A. Concerning recognition of the Union?

Q. Yes. A. Yes, I did.

Q. Now, what position did Mr. Pease occupy at that time at the mill?

A. I believe he was general manager.

Q. Was he in charge of the operations at Greenville?

A. Yes.

Mr. Jennings: I might state for the purposes of the record and the Trial Examiner, that Mr. Pease is sometimes referred to and will be sometimes referred to as Lionel and sometimes as Mr. Pease. It's the same man. Sometimes the men in speaking of him call him Lionel.

Q. (By Mr. Jennings) Now, on what date was it that you went down to speak to Mr. Lionel Pease at the mill?

A. March 25th.

Q. The day after the men had signed up?

A. Yes.

Q. And did you see Mr. Pease at that time?

A. Yes.

Q. Where did you see him?

(Testimony of Boyd Wyatt.)

A. In front of the office, right on the edge of the pond.

Q. And were you by yourself?

A. No, sir. [21]

Q. Who else was there at the time you spoke to Mr. Pease?

A. Man by the name of Charlie Block, Ruell Smith.

Q. Are—Ruel I believe that is spelled.

A. Lindsay Glenn, Leslie Allan; that is all that I remember of being there, although there were more there.

Q. Did you speak to Mr. Pease then at that time?

A. Yes.

Q. What did you say to Mr. Pease and what did he reply?

A. I told Mr. Pease we had a majority of his crew signed up in the Union and would he give us an agreement and he said no, that that wasn't the proper way to do it, that he would rather have an election; and that we had such a majority up there that I tried to talk him out of that and then he got hot-headed and said he would shut the God-damned thing down—excuse my English—before he would let it go Union. I told him that was a very poor attitude. He proceeded to tell me that him and his father didn't get along very well because his father was a union man and he wasn't. I proceeded to ask him what he had against the union. He said the union tried to run his business. Well, I told him

(Testimony of Boyd Wyatt.)

that was a falsehood. We didn't try to run his business. If we could run it better than he could we would have our own sawmill. That is about the course of the general conversation as I remember it. It's been considerable time ago. There was quite a lot more but I can't [22] remember accurately enough to tell it here.

Q. Did any of those men, the employees of the mill, join in the argument?

A. Yes, they did. Charlie Block's father joined in to some extent. He is the only one that actually did any talking. The rest would either echo a yes or no of either Mr. Pease or myself.

Q. How long after you spoke to Mr. Pease did you learn of the discharge of Ira Ware and Clayton Block?

A. Two or three days later.

Q. Did you speak to Mr. Pease about it?

A. Yes. I saw him up town.

Q. Did you ask him to put them back to work? Or anything of that sort?

A. No. I asked him why he discharged them. He said—do you wish for me—

Q. Yes. Give us the full conversation—by the way, who were present when you had this conversation with Mr. Pease?

A. Only Mr. Pease and myself.

Q. Go ahead.

A. He said he discharged Ira Ware for failure to do his work; that other men were complaining that he couldn't do his work. He discharged Clayton

(Testimony of Boyd Wyatt.)

Block because he was absent [23] from work so much—if I take my time here, Mr. Examiner—

Trial Examiner Ward: Take your time.

A. (Continuing) It's been two or three months since this conversation took place. I told him it looks like that with the manpower situation the way it is today that if you would can anyone now they must have deserved to be canned. Then he proceeded to tell me that he wanted to can Ira Ware before the union came into existence, if it did, out at the plant, and then I proceeded to tell him that—

Q. Did he tell you why he thought it was necessary to fire Ware before the union came in?

A. Only that he didn't do his work.

Q. Did he tell you why he thought it necessary to fire Ware before the union came in?

Mr. Francis Cheney: I object. I think he answered that question.

Trial Examiner Ward: Just give the conversation; what he said, as near as you remember it.

Mr. Jennings: You go ahead and tell us exactly what he said.

Trial Examiner Ward: Tell us what happened.

The Witness: I have told you almost the entire conversation now.

Mr. Jennings: I am referring to the latter part of the conversation. Take it up where I interrupted you and [24] go ahead.

Trial Examiner Ward: With reference to his idea of firing Ware before the Union came in. What was said about that?

(Testimony of Boyd Wyatt.)

The Witness: Well, he claimed that one particular man, namely the sawyer on the rig that Mr. Ware was working, was claiming that—was complaining so much about Mr. Ware's work that he wanted to discharge him before the Union came in due to the fact that he was afraid he couldn't after the Union came in. I asked him why he hired Mr. Ware back. He had only hired him a short while ago and Mr. Ware had worked for him two or three times. And he brushed the question aside and we talked of something else of minor consequence. I believe that that is the gist of the conversation as I remember it.

Q. Now, did you continue your efforts to organize the employees at the mill during this time?

A. Yes, I did.

Q. And during the month of April did you file any formal proceeding before the National Labor Relations Board in San Francisco?

A. Yes.

Q. That was sufficient for certification under Section 9-T of the Act, is that correct?

A. Yes. [25]

Q. And you recall that there was some mix-up about filing the petition?

A. Yes.

Q. What was the difficulty?

A. The first petition was at fault. It hadn't been signed properly. The officers of the Union had typed in their names instead of writing it in in ink and the Notary had forgotten to put his name on the seal.

(Testimony of Boyd Wyatt.)

Q. But ultimately you did get a petition on file?

A. Yes, we did file another one.

Q. And you recall then that Miss McElroy, a field examiner for the National Labor Relations Board, came up to Greenville? A. Yes.

Q. And you recall a conference which was held at the mill? A. Yes.

Q. With Mr. Pease? A. Yes.

Q. And who was present there besides Miss McElroy and Mr. Pease?

A. That is all that was present.

Q. You were there?

A. I was there, yes.

Q. The three of you? A. Yes. [26]

Q. And do you recall the date of that conference?

A. It was on Wednesday, May 19th or 20th.

Q. Well, was that this year? A. Yes.

Q. Wednesday would be the 19th of May, 1943.

Trial Examiner Ward: Off the record.

(Remarks off the record.)

Trial Examiner Ward: On the record.

Q. (By Mr. Jennings) Now, on Wednesday, the 19th of May, at this conference that you had with Mr. Pease, was there some discussion with regard to a consent election?

A. Yes, there was.

Q. Prior to that time had you been trying to resolve this matter in some fashion other than by a consent election?

(Testimony of Boyd Wyatt.)

A. Yes. I had tried to make it a consent cross-check.

Q. That was not acceptable? A. No.

Q. So then on the 19th of May you talked about a consent election? A. Yes.

Q. And was an agreement signed on that day for a consent election? A. Yes.

Q. And on what date was the election to be held?

A. May 22nd. [27]

Q. Did you at that time, while you were talking with Miss McElroy and Mr. Pease, designate an observer who was to act for the Union in the election? A. Yes.

Q. Who was the observer designated by you at that time? A. Ira Ware.

Q. What is that?

A. No; not Ira Ware, Lindsay Glenn. Excuse me.

Q. Now, do you require that notices of the election were posted on the Company's property at the mill?

A. Yes, they were the following day.

Q. That would be the 20th of May that notices were put up? A. Yes.

Q. Now, were Lindsay Glenn and Leslie Allan working on May the 20th? A. Yes.

Q. That was the day the notices were up?

A. Yes.

Q. Did they continue to work until the date of the election? A. What is that?

(Testimony of Boyd Wyatt.)

Q. Did they continue to work until the date of the election? A. No, sir; they didn't.

Q. And were they fired? A. Yes. [28]

Q. On what date? A. On the 21st.

Q. Did you, when you learned that they had been fired, did you do anything?

A. Yes. First I called Miss McElroy, the field examiner for the National Labor Relations Board in Susanville and informed her. She said she would be over the next morning, as early as she could get here.

Q. Did you go out to the Company's mill on the morning of the 22nd? A. Yes, I did.

Q. And did you speak to Mr. Pease at that time?

A. You said on the morning of the 22nd?

Q. That is the morning of the election; the morning before the election.

A. Yes, I did; yes.

Q. Were either Mr. Glenn or Mr. Allan with you at that time?

A. They were with me but they stayed outside.

Q. And was Miss McElroy there also?

A. Yes.

Q. Did you and Mr. Pease and Miss McElroy discuss the discharges of Glenn and Allan?

A. Yes, sir.

Q. And did you also discuss the question of whether or not they could vote in the election? [29]

A. Yes; we did.

Q. And what was the position that Mr. Pease took?

(Testimony of Boyd Wyatt.)

A. The position he took was that they could not vote in the election.

Q. For what reason?

A. That they no longer were employees of the Cheney Lumber Company.

Q. Did you decide to go ahead with the election on the 22nd? A. Yes.

Q. That election was held during the noon hour, is that right? A. Yes.

Q. And were you present when the ballots were tabulated? A. Yes.

Q. What were the results?

A. 16 to 16. There was two challenged votes; challenged by the Company.

Q. 16 for the Union? A. Yes.

Q. And 16 against the Union? A. Yes.

Q. And the votes of Lindsay Glenn and Leslie Allan were not counted because they were challenged? A. That is right. [30]

Q. And did you have any discussion with any representative of the Company following the counting of ballots?

A. Yes. I talked to Mr. Cheney.

Q. Did you talk to Mr. Pease also?

A. No. I don't believe I did.

Q. Is that Mr. Ben Cheney? A. Yes.

Q. Who were present when you had this conversation? A. Only him and I.

Q. What did he say and what did you say?

A. I don't just remember how the conversation started. He told me that we had lost the election

(Testimony of Boyd Wyatt.)

and for me to get the hell out and so the boys could go back to work; and I told him we would have won the election if the two men hadn't been fired.

[31]

Q. (By Mr. Jennings) Did any of the employees of the Company other than Glenn and Allan come up to see you on the 21st, Mr. Wyatt?

A. Yes, sir; namely the four men that quit. They gave the reason that they quit was that the Company had discharged Allan and Glenn.

Q. They told you that? [32]

A. Yes, they did.

Q. Now, were any of those employees members of the Union? A. They all were.

Q. Did they vote in the election?

A. No, sir; one did, namely Leslie Allan's brother, went back to work that morning, the morning of the 21st.

Q. He quit and then he went back to work?

A. Yes. I saw Mr. Pease about that and the man said that he would like to continue on and work there, that he thought he was a little hot-headed, and so Mr. Pease let him go back to work.

Q. During the conversation with Mr. Pease—by the way, was this man's name Allan, did you say—I believe you said he was Allan's brother. What is his first name? A. Doyle.

Q. The name is Doyle Allan?

A. Yes; Doyle Allan.

Q. During the time that you were talking with the election? A. What is that?

(Testimony of Boyd Wyatt.)

Mr. Pease and Doyle Allan about his going back to work did he indicate to Mr. Pease why he had left? A. Yes.

Q. What did he say?

A. He said he thought his brother had got a raw deal and that he thought he'd have been a heel if he hadn't have walked out in sympathy with his brother. [33]

Q. Do you recall that on the 19th of May, when the agreement was made for the consent election, that there was some discussion about the date of the election?

A. Yes. There was a great deal.

Q. Now was a date other than the 22nd of May originally fixed? A. Yes.

Q. What date was first agreed upon?

A. I couldn't tell you exactly. It was—

Q. Approximately how long after the 22nd; was it a week or 10 days or two weeks? How long?

A. It was either a week or two weeks.

Q. And did any of the men make any objections to the election being held at that later date?

A. Yes, they did.

Q. Did you recall anyone specifically that took the lead in that regard? A. Leslie Allan.

Q. Did you see him or hear him make any statements with regard to the date of the election?

A. Yes. He said if the election was going to be that far off that he didn't see how he could stay, and the other men all felt the same way. [34]

Q. (By Mr. Jennings) State what the men told

(Testimony of Boyd Wyatt.)

you as to the reason why they felt they couldn't stay?

A. They felt that the Company was discriminating against the Union members, Union employees, and were favoring the non-Union employees.

Q. Now, what did Leslie Allan do in connection with getting the election set at an earlier date?

A. Miss McElroy got into her car to leave, the date had been decided on for the election, at this later date. Leslie Allan walked over to the car and what he said I don't know, as I wasn't there.

Q. Did he walk over there and talk to Miss McElroy? A. Yes; he did. [35]

Q. Where was her car parked in reference to the Company's office?

A. Right in front of the office.

Q. And did he talk to Miss McElroy for a while?

A. Yes, he did.

Q. And did she thereafter go back into the office?

A. By that time the rest of the men walked over to her car and she called me over and said if she could get Mr. Cheney's O.K. that even though it would be of great inconvenience to her she would try and have the election at noon on the next Saturday.

Q. That would be the 22nd? A. Yes.

Q. Yes.

A. And then she did go back into the office and it was all right with Mr. Cheney.

(Testimony of Boyd Wyatt.)

Q. So the election was then held on the 22nd instead of this later date?

A. That is right—I beg your pardon. I didn't mean Mr. Cheney. I meant Mr. Pease.

Q. Yes. Mr. Cheney was not there at that time, was he? A. That is right.

Q. Did Mr. Pease or Mr. Cheney sign the consent election agreement? A. Mr. Pease. [36]

Cross Examination

Q. When was your first contact with the men at the Cheney California Lumber Company?

A. I contacted the men individually probably four or five months prior to the time when I signed them up.

Q. And why did you contact them?

A. Because they had asked me on several occasions to organize the plant.

Q. These men asked you to organize the plant?

A. That is right.

Q. Did you sign any of those men up at that time? A. No, sir; I didn't.

Q. Did you make any attempt to organize the plant? A. Not until March 24th.

Q. What are your duties as the secretary of the Union, that is, in regard to organization?

A. As secretary of this local Union I have nothing to do with organization.

Q. Under what authority did you organize or attempt to organize the men?

(Testimony of Boyd Wyatt.)

A. On March 21st I had authority from the Northern California District Council.

Q. By reason of the fact that you were on the District Council?

A. The District Council had hired me to organize this plant and several others. [38]

Q. When you decided to go out and organize these men what were the first steps that you took? Did you call a meeting?

A. No, sir; I didn't immediately.

Q. You didn't immediately, you say?

A. No. I had a majority signed up on about the second day, the 25th of March.

Q. Now I am speaking of on the 24th. Now, you decided to organize this concern, and how did you go about it?

A. As I stated here before, it was a very lucky break. The men were all standing in front of the post office—oh, there must have been 18 men there at the time, and as I said before, they were just ripe to join the Union.

Q. Why were they just ripe?

A. Because they felt that they was being discriminated against. These men were already Union minded men and some of the men at the plant had, as I said before—were working six and seven days a week while these men were lucky [41] to get in three or four. They couldn't make a living and, of course, the freeze order wouldn't permit them to

(Testimony of Boyd Wyatt.)

get a release. They felt the Union could probably help them in dividing up their time some.

Trial Examiner Ward: That is what they told you at this time?

The Witness: Yes, sir.

Q. (By Mr. Francis Cheney) And you signed the men up then, a goodly portion of them you signed up in front of the post office, you say?

A. Yes.

Q. Was the mill running that day?

A. Beg pardon?

Q. Was the mill in operation that day?

A. No, it wasn't.

Q. So all these men were off, the mill was down and all the men were off and there happened to be a goodly number of them out here and you talked to them I understand?

A. That is right.

Q. And you signed them up?

A. Yes.

Q. Were Block and Ware among that group of men that were standing out in front of the post office?

A. Yes, sir.

Q. And you signed them up at that time too?

[42]

A. Yes.

Q. How many men did you sign up at that time?

A. I believe it was 16 there in the course of 30 minutes.

Q. After signing these men to the Union what was your next step in organization?

(Testimony of Boyd Wyatt.)

A. I went to see Mr. Pease about recognition of the Union.

Q. Did you tell Mr. Pease that you had a certain proportion of his workers signed?

A. Yes. I told him I had a majority.

Q. Was that a majority?

A. At the time I talked to Mr. Pease on the 25th and I had signed up three or four or five more and I did have a majority; 51 per cent constitutes a majority.

Q. Then what did you propose to Mr. Pease in the way of recognizing the Union?

A. I proposed that he give us an agreement.

Q. And did Mr. Pease refuse to give you an agreement? A. Yes.

Q. Did Mr. Pease—did you have any agreement to offer to him or any terms to offer to him?

A. Yes.

Q. Did you have a written agreement at that time?

A. No; not with me. However, the next day I did take him one down.

Q. As a matter of fact, then, Mr. Pease had no agreement [43] which he could either reject or accept?

A. He wouldn't even talk about an agreement.

Q. Well, what was your conversation then with Mr. Pease?

A. That conversation was repeated here a while ago.

(Testimony of Boyd Wyatt.)

Q. Would you mind repeating it again?

A. Mr. Pease was up—I met him on the bank of the pond directly in front of the office. There was a group of men there. I will name the ones that I know were there again; Ruel Smith, Charlie Block, Lindsay Glenn, Leslie Allan; Lester Ladd walked up after the conversation was about over. The rest of them—I don't recall who was there. I told Mr. Pease that I had a majority of his crew signed up in the Union and would he recognize the Union. He immediately said that he doubted I had a majority and, of course, it was impossible for me to show him the card as it would jeopardize the men's position at the plant, so I suggested that we call a National Labor Relations Board Examiner and have a cross check of the cards. He didn't answer to that at that time. One of the men spoke up and wanted to know what he had against the Union. I believe that was Mr. Block. Well, he said there was plenty he had against it and then at that time he said that him and his father didn't get along any too well because of the Union, because his father was a very strong Union member and had been all his life and that he, namely Lionel, was against the Union and then he said if it [44] does go Union, he says, I'm going to shut the God-damned thing down.

Q. Now, as a matter of fact, did not Mr. Lionel Pease, didn't he suggest an election? A. Yes.

Q. He suggested the election? He made the suggestion that they have an election, did he not?

(Testimony of Boyd Wyatt.)

A. He didn't make the suggestion that we have an election. He made the suggestion that we turn it over to the Labor Board so it could be carried out according to Hoyle.

Q. Well, then, of course, you agreed, naturally, that you have it carried out according to Hoyle?

A. Yes.

Q. You would want the proper proceedings to be taken, and Mr. Pease wanted the proper proceedings to be taken, did he not, to determine it?

A. Yes; although it wasn't necessary to do that.

Q. Well, that was your opinion?

A. Yes. We could have had a cross check.

Q. Mr. Pease told you that he wanted the thing carried out according to Hoyle and that he suggested that the Labor Relations Board handle it from there on?

A. Yes; because he doubted that I had a majority.

Q. That is all I want to know. And what were Mr. Ware's duties at the mill, the Cheney California plant? [45]

Q. (By Mr. Francis Cheney) You talked to Mr. Pease about the discharge of Mr. Ware, did you not? A. Yes.

Q. And Mr. Pease, according to your testimony, told you that he was discharged for failure to do his work? A. Yes.

Q. That the other men complained of Mr. Ware not doing his work? A. Yes.

(Testimony of Boyd Wyatt.)

Q. And that he discharged him to protect the other men, is that it?

A. There was one other man; it wasn't men. One man. [46]

Q. (By Mr. Cheney) Well, just what word did Mr. Pease use to convey to you the idea that Mr. Block was discharged for being absent from his work?

A. He just merely said that he was off work too much.

Q. Mr. Pease also made the statement to you that he was discharging Mr. Block and Mr. Ware at that time in addition to these reasons, for these reasons, and doing it now because later, when the Union came in he wouldn't be able to.

A. Yes. He did tell me that concerning Mr. Ware. He didn't say that about Mr. Block.

Q. But in other words, Mr. Pease conveyed to you that the Union was coming in and that he thought it was best to get rid of these men now for these reasons, if not, after the Union came in the Union might object to these men being discharged; is that the point that he was making? Is that [47] your understanding of it?

A. He never referred to the Union as coming in; it was always "if the Union did come in." He always stated, however—that was the general conveyance, that he couldn't discharge these men if the Union came into existence at the operation.

Q. You are pretty well familiar with all the sawmills in this area, I understand, and you are

(Testimony of Boyd Wyatt.)

employed at the Setzer Company now, as I understood you to testify? A. Yes.

Q. These sawmills are seasonal, are they not, in this area? A. Yes; the sawmills are.

Q. And during bad weather, why, they're not able to operate; is that right?

A. Well, it's according to how bad the weather is, of course.

Q. And certain sawmills in this area lost considerable time this winter and spring, did they not, because of bad weather conditions?

A. That I couldn't say—that all of them did.

Q. I say certain sawmills did?

A. Yes, they did.

Q. Did Setzer Box Company where you work, did they run full time right through the winter?

[48]

Q. Mr. Pease—I understand you questioned Mr. Pease about these two men, Glenn and Mr. Allan voting at the election? A. That is right.

Q. And Mr. Pease told you that he wouldn't recognize their vote because they were no longer employed by the Cheney California Company?

Q. No, as to the conversations about the election, about the date and the time of the election—I understand that the election was—that on the 19th it was decided that the election be on the 20th. Was that it, or 22nd? A. 22nd.

Q. And that the notices of election were posted on the 20th to be held on the 22nd?

(Testimony of Boyd Wyatt.)

A. The notices were posted either the night of the 19th or the very early morning of the 20th.

Q. And Mr. Pease had no objection to the election being held?

A. Apparently not. I didn't talk to him at that time, as I said before. Miss McElroy went into the office alone [50] and talked to him.

Q. But he had no objection, to your knowledge?

A. No, sir.

Q. As a matter of fact, he co-operated, did he not, with you in holding the election and having the men there and so forth?

A. Yes, apparently he did.

Q. You stated that four men stated to you—that four men left work after Glenn and Allan had been discharged; is that true? A. Yes.

Q. Who were these four men?

A. Doyle Allan, Clyde Quinliven—

Q. What is that second name?

A. Quinliven, Fay Smith—I can't recall the other one. He was just a young kid. I can't recall his name.

Mr. Jennings: Dees?

The Witness: That is the name.

Q. (By Mr. Cheney) Now, these four men, as you state, quit because Allan and Glenn had been discharged. Did you talk to these four men afterwards?

A. Yes, sir; all of them came to my house that morning.

(Testimony of Boyd Wyatt.)

Q. I see. Right directly from the plant?

A. Yes, sir.

Q. They were not discharged?

A. Two were discharged.

Q. I mean, these four men were not discharged?

A. No. [51]

Q. They quit themselves? A. Yes.

Q. Did any of those four men go back to work?

A. One, Doyle Allan.

Q. Doyle Allan went back to work?

A. Yes.

Q. Well, why did he go back to work?

A. He told me he was broke and he didn't have enough money to get out of town on.

Q. In other words, the rest of them got out of town, did they?

A. One of them did, Clyde Quinliven. Fay Smith is working at Setzer's at the present time if he hasn't gone to the Navy for which he had a call. The other guy—I don't know just where he is.

Q. Did those men go back to the plant and were they around the plant after they quit at the time they quit? A. Yes.

Q. They went down there later? A. Yes.

Q. Can you state whether or not they were offered their jobs back?

A. They were offered their jobs back under this condition—that they would have to stay there permanently.

Q. Well, as a matter of fact, that is the law, isn't it? A. Not necessarily.

(Testimony of Boyd Wyatt.)

Q. Well, at least labor is frozen on the job. Is that [52] what you mean by being there permanently?

A. Well, in other words, they couldn't come back today and quit next week. They would have to stay a considerable length of time.

Q. (By Mr. Cheney) I understand that Leslie Allan [53] objected to the election being postponed?

A. That is right.

Q. And he was one of the men, was he not, that was discharged?

A. That is right.

Q. And Mr. Pease, on Mr. Allan's objection, agreed then to let it be held on the 22nd?

A. It wasn't necessarily on Mr. Allan's objection. All of the men were objecting.

Q. Well, you said all the men, but the only name that you gave was Leslie Allan's name.

A. Leslie Allan was the ringleader.

Q. He was the ringleader?

A. Yes, sir.

Q. I see. You made the statement that the Company was favoring non-union employees and disfavoring union employees. Just in what way were they favoring non-union employees?

A. They were working the non-union employees longer hours than they were the union employees. It's a well known fact; I think it will be established by your payroll.

Q. Well, employees you say you were working

(Testimony of Boyd Wyatt.)

longer hours. Do you know any of the employees that were working longer hours? Non-union employees?

A. I'm not familiar with their names. I never had anything to do with them.

Q. I see. You are not familiar with any of the names of those men?

A. No. However, I do know that. [54]

Q. Did you examine the payroll? A. No.

Q. You have no absolute knowledge, then?

A. No. I only have the men's testimony on that.

Q. Did those men tell you that they were working longer hours?

A. The men that wasn't working the long hours told me the other men were. I could give you a couple of names.

Trial Examiner Ward: Just wait for the question, Mr. Witness.

Mr. Francis Cheney: I think that that is all.

Redirect Examination

Q. (By Mr. Jennings) You say that the men who were not working the long hours are the ones that told you? A. Yes.

IRA LEOWN WARE,

a witness called by and on behalf of the National Labor Relations Board, testified as follows:

Direct Examination

Q. (By Mr. Jennings) What is your full name, please? A. Ira Leown Ware. [55]

Q. Where are you employed at the present time?

A. Setzer Box Company.

Q. How long have you been employed in the various operations in the lumber industry?

A. Throughout my life or just in the state?

Q. Throughout your life.

A. About between 20 and 22 years, approximately.

Q. Were you employed by Cheney during 1942?

A. Yes, sir.

Q. About when did you go to work for Cheney in 1942?

A. Some time along in June, latter part of June or the 1st of July.

Q. 1942? A. 1942.

Q. Now, what jobs did you hold during 1942 and how long did you work?

A. What jobs?

Q. Yes.

A. Well, I held various jobs wherever he saw it was fit to put me. I ran the donkey. I worked on the hoist, principally on the hoist. I put more time in there on the log hoist, putting logs up to the saws.

(Testimony of Ira Leown Ware.)

Q. Did you continue to work until the seasonal shutdown in the fall or winter? A. I did.

Q. Did you work doing any maintenance work during the period of the seasonal shutdown?

A. Some; not much. [56]

Q. Were you laid off during the winter months?

A. Yes.

Q. Did you get work elsewhere for a while?

A. I did.

Q. Where was that?

A. Hurlong, Minnesota, ammunition dump.

Q. And thereafter did you return to Greenville?

A. I did.

Q. Approximately when did you come back to Greenville?

A. I came back to Greenville from leaving there the last of February, 1st of March.

Q. 1943, is that right?

A. 1943, that is right.

Q. You got back to Greenville then, some time in the early part of March, 1943?

A. I got back here—I left there on the last day and drove home. Got home the last day of February, got home that evening of the 28th.

Q. And after you came back here did you state to Mr. Pease anything about going back to work?

A. Well, I had seen him before I had quit my job up there and was talking to him about it.

Q. Before you quit your job where?

A. At Hurlong.

(Testimony of Ira Leown Ware.)

Q. And while you were still working at Hurlong you returned to Greenville and talked to Mr. Pease?

A. I did.

Q. And what conversation did you have with Mr. Pease at [57] that time?

A. Well, I met him in the Cafe and I asked him about when he thought the mill would be starting again and he said in about a week, possibly 10 days, and I asked him if he thought it would be advisable for me to quit over there, if he'd have anything for me here. He said yes. He said, "I might not be able to put you on immediately, but within a few days."

Q. Did you quit your job then up at the ammunition dump?

A. I went back and finished up the month and quit for the purpose of going back to work at the mill.

Q. Did you go out to the mill then and go to work after you returned to Greenville?

A. I did within a few days afterwards. I don't just exactly remember how long it was, probably four or five days or a week, something like that.

Q. What job were you put on?

A. Back on the well, on the hoist on the well.

Q. You told me you had held that job before?

A. That is right.

Q. What do you do on the hoist job?

A. Well, the job is where the log is raised from the well which leads—the well is a sort of a kind

(Testimony of Ira Leown Ware.)

of a box description that there is a couple of chains comes down into that raises the logs out of the pond or out of this well and puts them up on the skidway to the saws, to the mill, and this hoist is driven by electric motor with a [58] friction clutch on it. You can run it either way that you desire to run it.

Q. Did you work at any other job after you went back to work in the early part of March, 1943?

A. No.

Q. How long did you continue to work—about how long did you work?

A. Well, from—it was about two or three weeks probably, a little less; approximately that.

Q. Was there any criticism of your work during the time you were employed during 1943?

A. No, sir.

Q. Mr. Pease or anyone else representing the Company talk to you about your work?

A. No, sir.

Q. Tell you that there was anything wrong with it? A. No, sir.

Q. Mr. Ware, were you a member of the Union at the time you were working at the Cheney Lumber Company? A. I was.

Q. How long had you been a member of the Union?

A. I had been a union member for quite a few years. I have been a union member in this state ever since I have been here.

Q. How long? A. The AFL.

(Testimony of Ira Leown Ware.)

Q. How long is that?

A. It will be or is about three and a half years.

[59]

Q. Did you wear any union insignia during the time you were employed at Cheney's?

A. I did.

Q. What did you wear?

A. I wore a union button.

Q. Where did you wear it? A. On my hat.

Q. Did you wear that consistently all of the time you were working? A. Yes, sir.

Q. Calling your attention to March the 24th of 1943, were you a member of the Union at that time?

A. I was.

Q. Did you at Mr. Wyatt's request sign another designation card for the Union?

A. That is right.

Q. Do you remember the occasion that Mr. Wyatt has testified about? A. Yes, sir.

Q. And you signed other designations at that time? A. I did.

Q. Did you have anything to do with the signing of the other employees at the time they were signing up in front of the post office?

A. I did, yes, sir.

Q. And what did you do?

A. Well, I worked in with the boys to help them to organize the Cheney Lumber Company and some of the boys were [60] a little scared they'd lose their jobs if they would sign up and I told them

(Testimony of Ira Leown Ware.)

that I didn't see hardly where they would be losing their jobs, because I didn't think that there would be any discrimination on a man signing anybody to join a union to help give labor a little right.

Q. Now, did you discuss the union among the employees out at the mill? A. Some, yes.

Q. What else did you do in connection with this effort to sign the employees up in the union?

A. Well, I didn't do much else, any more than to help them to get as many members as we could.

Q. By the way, who was the foreman out at the mill during 1943? A. Jake Williams.

Q. How long was he the foreman? Had he been the foreman in '42? A. Yes.

Q. How long did he continue as foreman in '43?

A. For the exact date I couldn't say. I don't know.

Q. Did someone else take Williams' place at some time during '43? A. Yes.

Q. Who was that? A. Herman Higday.

Q. Did you see either Mr. Williams or Mr. Higday standing around on the 24th of March, when the employees were signing up for the Union? [61]

A. I saw Mr. Williams.

Q. Did you have any conversation with Mr. Williams on that day or the following day, about the Union?

A. I didn't have any conversation with him that immediate day but I did the following day. I talked to him about it.

(Testimony of Ira Leown Ware.)

Q. What did Mr. Williams have to say?

A. Well, he asked me if those boys that signed those cards for the Union, if they had a right to back out if they wanted to, and I told him that I didn't think so.

Q. Did Williams say anything further?

A. Sir?

Q. Did he say anything more at that time?

A. Well, he said that if they went Union down there, why, he wasn't going to stay, that he didn't believe in the Union and sure wouldn't stay where there was a union.

Q. Now, you recall the signing up on the 24th of March, '43, in front of the post office, signing this new pledge card? A. Yes.

Q. I am calling your attention to the 24th of March when you signed the pledge card in front of the post office. A. Yes.

Q. Were you actually working at the mill at that time? Was the mill operating?

A. The mill that day—it wasn't operating but it was in operation. That particular day it wasn't operating but what the cause was I don't just recall, but I believe that it was because we were out of logs.

[62]

Q. Now, did you work the following day, that is, March the 25th?

A. I went back to work—no, I went back to work the 26th.

Q. What did you do on March the 25th?

(Testimony of Ira Leown Ware.)

A. I went to Reno.

Q. Did you talk to Mr. Pease, the superintendent, up there, before you went to Reno?

A. I did.

Q. What was the conversation you had with Mr. Pease?

A. Well, I asked him if it would be all right for me to have that day off, that my boy wanted to see about joining the Navy, and he said yes; he said, "That will be all right," and so I asked him then if I could have my check so I'd have some money to go with and to get back with and so they give me my check for what I had coming.

Q. Now, on what date was this that you had this conversation with Mr. Pease, if you recall?

A. I think that that was the—I'm not positive, but it was around the 21st or 22nd.

Q. Did the mill operate in the period following your conversation with Mr. Pease on the 25th of March?

A. Did it operate afterwards?

Q. Yes. A. Yes.

Q. Were you working?

A. No, not after the 26th.

Q. No; here's what I mean, Mr. Ware. You had this conver- [63] sation with Mr. Pease you say on the 22nd or 21st?

A. Yes.

Q. And you asked him to get off on the 25th, is that right?

A. Yes; that is right.

Q. Now, did you work out at the mill after the

(Testimony of Ira Leown Ware.)

22nd when you talked to Mr. Pease? Did you do any work out there at all? A. No, I didn't.

Trial Examiner Ward: Between the 21st and the 25th you didn't work?

The Witness: No. I went back to work but I didn't work.

Q. (By Mr. Jennings) Now, what date did you come back to work, to go to work?

A. The 26th.

Q. The morning of the 26th? A. Yes.

Q. And did you go up to your job and start in to work on that morning? A. I did.

Q. What did you do?

A. Well, I went back to my usual job and I had hoisted three or four logs, oh, I guess probably we'd been at work 10 or 15 minutes and we needed a longer pipe pole to bring in some of the logs because they were quite a ways away and I asked the boy that worked on the pond there with me or on the well with me if he knew where it was and he said [64] it was laying over by the planer so I started over after it. On my way over there I met Lionel and then is when he told me that he wouldn't need me any more.

Q. Did he give you any reason?

A. I asked him what the reason was and he said because I didn't do my work. He says I let the other man on the pond do all my work and I told him, "No, Lionel," I says, "that is not the reason." I says, "The reason you're letting me go is because

(Testimony of Ira Leown Ware.)

you know I'm pretty heavily in these union activities."

He says, "No," he says, "you can leave it to the boys." He says, "You left all your work for them to do, wouldn't put the logs up."

Q. Was anything further said?

A. Well, I told him it was O.K. with me if that was the way he felt about it.

Q. Did he give you a discharge slip?

A. He did.

Q. Have you that slip? A. I have.

Mr. Jennings: I ask that this termination notice handed me by the witness be marked as Board's 2 for identification.

Trial Examiner Ward: It may be.

(Thereupon, the document above referred to was marked as Board's Exhibit No. 2 for identification.)

Q. (By Mr. Jennings) Mr. Ware, is Board's Exhibit 2 for identification the termination notice given you by Mr. Pease [65] the morning of March 26, 1943?

A. That is the termination notice; that is the one that the clerk gave me.

Q. Was Mr. Pease there?

A. He went in and told his brother (his brother was clerk) and he told him to give me this release as they call it.

Q. Not I noticed—strike that.

Mr. Jennings: I offer the termination notice in evidence as Board's Exhibit 2.

(Testimony of Ira Leown Ware.)

Mr. Cheney: No objection.

Trial Examiner Ward: It will be received.

(Thereupon the document above referred to was marked as Board's Exhibit No. 2 and received in evidence.)

BOARD'S EXHIBIT No. 2

Deliver this copy to the worker at the
time his services are terminated

Use This Form Only for Reporting Terminations
of Service Involving Possible Disqualification

Social Security account number of worker 470-03-
8469

Name of worker Ira L. Ware

Date of this notice 3/26/43

Last date individual worked 3/18/43

Date employer was informed of worker's termina-
tion of service if other than date entered in the
preceding item 3/26/43

Employer's name and address must be typewritten
or entered in ink

Cheney Calif. Lbr. Co.

Box 143

Greenville, Calif.

Do not ask worker to sign this form

Instructions for the worker appear on the reverse

(Testimony of Ira Leown Ware.)

Termination Notice Concerning
Possible Disqualification
Cause of Termination of Service

Check item 1, 2, 3 or 4, or state the cause of separation under item 5. Present full explanation under item 6:

- 1 ☐ Left voluntarily
2 ☒ Discharged for misconduct connected with his work
3 ☐ Worker not able to work
4 ☐ Worker not available for work
5 ☐ Other cause
6 ☐ Explanation
.....
.....

I Certify that the information given on this form is true and correct to the best of my knowledge and belief.

By KENNETH PEASE

Signature of individual completing
this notice

California Department of Employment
Affiliated with Social Security Board

Instructions to Worker for Use of Termination
Notice Concerning Possible Disqualification

As soon as possible, take this notice to the local employment office in the vicinity in which you live. If there is no United States Employment Service office in your town write the nearest office, asking

when and where you can consult a representative of the Department of Employment. It is important that you do this immediately, regardless of possible disqualification.

DO NOT DESTROY THIS NOTICE. Your employer is required to give it to you under the Regulations of the California Employment Commission.

If you file a claim for unemployment insurance or if you renew or continue a claim which was previously filed, **PRESENT THIS NOTICE** at the time of registration for work and filing a claim.

You will be ineligible for unemployment insurance if the California Department of Employment determines that:

1. You quit your job without good cause (2 weeks ineligibility), or
2. You were discharged for misconduct connected with your most recent work without good cause (1-6 weeks ineligibility), or
3. You wilfully made a false statement or representation or wilfully failed to report a material fact to obtain unemployment insurance (4 weeks ineligibility).

You can not collect unemployment insurance when you are sick and unable to work.

If, without good cause, you refuse suitable employment when offered to you, or fail to apply for suitable employment when notified by the United States Employment Service office, you will be ineligible for unemployment insurance.

Failure to present this notice when filing a claim

(Testimony of Ira Leown Ware.)

for unemployment insurance may result in a serious delay in the determination of your insurance rights.

WARNING: It is not necessary to employ anyone to help you collect benefits; someone in the local employment office will help you.

Q. (By Mr. Jennings) I notice, Mr. Ware, that the reason given on the termination notice, is "Discharged for misconduct connected with his work."

A. That is right.

Q. Did Mr. Pease tell you of any respect in which you had engaged in misconduct in your work?

A. He didn't.

Q. Did you question him with regard to the reason he so marked your termination notice?

A. I did not.

Q. You took it and left? A. I did.

Q. The notice states that the last day you worked was [66] 3/18/43, March 18, 1943.

A. That is right.

Q. Is that about right?

A. That is about right.

Q. Now, during the period from 3/18/43 to 3/26/43, that is, from the 18th to the 26th—

A. Yes, sir.

Q. —had you seen Mr. Pease?

A. Well, I saw him, yes, but I had no conversation with him.

(Testimony of Ira Leown Ware.)

Q. Had you been out at the mill during any of that time?

A. No—yes, I was too, because we were laid off a day or two for some reason, but I don't just remember what—something that turned up at the mill didn't run—but just to remember exactly why or what I don't remember.

Q. Do you remember that you went out and talked to Mr. Pease on March 21st or 22nd about getting off to go to Reno?

A. I did. I went out there and asked him about laying off, to get my check.

Q. And at the time you talked to Mr. Pease on the 21st or 22nd of March did he indicate to you that he thought you weren't doing your work?

A. No, sir.

Q. Did he discuss your work with you?

A. No, sir.

Q. Did he tell you that you were to be fired?

A. No, sir. [67]

Q. Did he say anything about your work at all to you? A. No, sir.

Q. And did you make arrangements with him at that time to come back to work?

A. I did not.

Q. Did you ask him for one day off or did you ask him to be off indefinitely?

A. I asked him for the day off to go to Reno.

Q. And what did he say?

A. He said it was perfectly all right. And also

(Testimony of Ira Leown Ware.)

I asked him for my check and he said that was perfectly all right.

Q. Was there any discussion at that time about whether you were to be through, finished with your work at the Company? A. None at all.

Q. No discussion of your work at all?

A. No, sir.

Mr. Jennings: That is all.

Trial Examiner Ward: You may cross-examine.

Cross Examination

Q. (By Mr. Cheney) You made the statement that you did some maintenance work at the Cheney Lumber Company during the winter?

A. Yes.

Q. Did you do this maintenance work when the mill was [68] not running? A. Yes.

Q. So there were days that you didn't work at the plant even though the plant was in operation?

A. That is right.

Q. You made the statement that Mr. Pease offered you your job back at the mill when it would start up again, start operations?

A. That is right.

Q. And you came back to work?

A. That is right.

Q. I understand that you wore a union button at the plant all the time that you were working there or most of the time that you were working there? A. I did.

Q. Even prior to the time that the men signed

(Testimony of Ira Leown Ware.)

up for the Union, the other men signed up for the Union? A. That is right.

Q. Did anybody ever tell you not to wear that button? A. No.

Q. You were never molested?

A. No, sir.

Q. You made the statement that you helped sign up the men? A. I did.

Q. In the Union? A. I did.

Q. And also that you told the men that you believed [69] that the mill—the Cheney Lumber Company—would not discriminate against a Union man.

A. I did.

Q. You had reason, of course, by experience, to know that we wouldn't discriminate against a Union man.

A. I had reason to believe that——

Q. Yes or no. A. Yes.

Q. Now, you stated that after that time you talked to Mr. Jake Williams or he talked to you, whichever way it was? A. Yes.

Q. About signing up with the Union?

A. Yes, sir.

Q. I understand that Mr. Williams asked you—mentioned the cards—if they would have a right to back out, were the words I believe you used?

A. That's right.

Q. Who was your boss at that time, your mill boss at the time you were signing these men up in the Union?

(Testimony of Ira Leown Ware.)

A. I think Herman Higday was the foreman at that time.

Q. What was Jake Williams doing at that time?

A. I think he was sawing at that time.

Q. I believe that is correct. And Mr. Williams made the statement to you at that time that he would quit if he had to sign—before he would sign up with the Union? A. That is right.

Q. He was a sawyer there, sawing in the mill?

A. Yes. [70]

Q. If the Mill was not operating—if the mill I understand was not operating—I can't quite get this straight—if the mill I understand was not operating between the 18th and 25th of March when you were laid off and you were talking about going to Reno—?

A. Well, as I said, I didn't just remember why or what was the reason. It seems to me as if it wasn't in operation or maybe had run a half a day or something. It seems, if I can recall right, it seems as if we had trouble with the burner conveyor and I think they were down for that reason, but I wouldn't say for positiveness.

Q. That is the conveyor that runs under the mill and up? A. That is right.

Q. That was down? A. That is right.

Q. Well, now, but you thought that you were under the impression that they were going to work on the 25th and that is why you asked permission to have that day off? A. That is right.

(Testimony of Ira Leown Ware.)

Q. You asked for your time up to that date in full? A. That is right.

Q. And you got your time and he very gladly gave it to you? A. That is right.

Q. Had you ever had any conversations with Mr. Pease or Mr. Higday or any of the other fellows there or particularly those two regarding joining the union? A. No, sir. [71]

Q. And as a matter of fact, your first conversation with Mr. Pease after asking him if he would let you have the day off and your time in full was when you left the well and were going for a pipe pole? A. That is right.

Q. And he met you, I understand?

A. That is right.

Q. And he told you that you were discharged?

A. That is right.

Q. And you asked him why you were discharged?

A. That is right.

Q. And he told you that you were discharged for incompetency? A. That is right.

Q. I believe you said something along about him making the remark that he would leave it up to the men that there was somebody objecting to your work?

A. I told him that that wasn't the reason that he was letting me go. The reason he was letting me go was on account of Union activities and he said no, it wasn't. He said that I didn't do my work and he says I could leave it up to the men. He says,

(Testimony of Ira Leown Ware.)

"to the men that work with you"; he says, that is the way he said it.

And I says, "No, Lionel, that isn't right," I says

And he said, "Yes, it is."

And I says, "O.K."

Q. After being discharged from the Cheney Lumber Company what did you do? Did you go to work immediately and find [72] a job?

A. I went to work about a month after that.

Q. A lot of jobs around here weren't there, at that time?

A. Well, there were a lot of jobs around, yes not right in the immediate vicinity but otherwise in different places.

Q. So that a man with your experience in the lumbering business wouldn't have any trouble getting a job?

A. No; I didn't feel as if I'd have any trouble getting a job if I wanted to leave home and go other places but I didn't think I just wanted to pull out of Greenville and leave.

Q. Did you go to the other mills and ask for work?

A. I did.

Q. Did you go to Morse & Langberg?

A. Yes.

Q. Had you ever worked for them?

A. I did not.

Q. They refused you work, did they?

A. No, they didn't refuse me work. They weren't

(Testimony of Ira Leown Ware.)

ready to operate at that time. They were building their mill and weren't quite ready for it.

Q. Did you go over to the cedar mill?

A. I did not.

Q. Had you ever worked there?

A. I had not.

Q. Did you go to Frizzie's? A. No. [73]

Trial Examiner Ward: May I ask the purpose of this line of questioning?

Mr. Francis Cheney: Yes, because under the penalties and so forth involved in here, your Honor, because of back pay and so forth.

Trial Examiner Ward: I will state for the purpose of the record where the issue is raised the Examiner states that for the purpose of the case, insofar as reinstatement of employees is concerned, the fact that substantially equivalent employment has been obtained will be assumed for the purpose of this case. We are assuming that he has received substantially equivalent employment and we don't care for any evidence on that point. [74]

Redirect Examination

Q. (By Mr. Jennings) Who was the sawyer working above the hoist at the time you were discharged, Mr. Ware? [75]

A. Let's see—Clyde—I can't think of his last name—Clyde Johnson was on the big rig and Williams was on the small rig.

Q. Jake Williams?

(Testimony of Ira Leown Ware.)

A. Jake Williams. Not the small rig either, but we called it the middle mill.

Q. Did Pease say anything to you at any time that you were talking too much around the mill; did he ever criticize you for that?

A. Never did, no.

Q. I am not sure that I understood you correctly, Mr. Ware. I think that you answered Mr. Cheney stating that you had reason to think that the Company wouldn't discriminate against you for Union membership. Did I understand you correctly?

A. That is right.

Q. And what reason did you think you had?

A. Well, because I figured that they were people with gentlemen's principles enough to play fair and square on the side of labor. [76]

ALVIN WAITTS

a witness called by and on behalf of the National Labor Relations Board.

Direct Examination

Q. (By Mr. Jennings) What is your full name, please? A. Alvin Waitts.

Q. Where are you employed at the present time?

A. Cheney Lumber Company, or Cheney California Lumber Company.

Q. Cheney California Lumber Company?

A. Yes.

(Testimony of Alvin Waitts.)

Q. And what is your job out there?

A. Run an edger.

Q. Run an edger? A. Yes.

Q. How long have you held that job?

A. Ever since the mill started last summer, last year in March, I guess. [78]

Q. Have you been running that edger steadily since the mill started in March of 1942?

A. All except the first week. I tailed the edger the first week, that is, I worked on the strip catcher.

Q. Will you describe for me the nature of your job, what you do, what the edger is and how it operates; and what the purpose of it is.

A. The lumber comes down to me, it's in lumber form and the edger has saws in it and it makes—

Q. The lumber is in slabs you mean?

A. Yes.

Q. And how long are the slabs?

A. Eight feet long.

Q. Yes.

A. And when I run them through the edger why this makes two by fours and edging and side that is no good.

Q. That is, it cuts off two by fours in the middle of the slab? A. Yes.

Q. And then there are strips on the side?

A. The bark on the side has to be thrown away.

Q. Well, are all of the strips that run through there good except the two on the outside or are there some of those bad too?

(Testimony of Alvin Waitts.)

A. There is some that is bad, that is, there is rotten and [79] broken pieces and they have to be thrown away. If it's a whole slab it all has to go, you know.

Q. How are these slabs or strips carried through the edger?

A. By rolls. When you stick her in there she goes right through.

Q. Now, where do they go through to?

A. To the back of the edger to the strip catcher.

Q. The strip catcher works on the other side from you? A. On the back end of it.

Q. And in which direction do the strips go after they get to the strip catcher?

A. The strip goes one way and the lumber goes the other.

Q. What happens to the strips?

A. They go into the hog conveyor.

Q. Are there rollers which carry the good strips away?

A. There is a chain that takes the lumber to the planer and—two chains rather, and there is one chain that takes it to the hog that is what is thrown away.

Q. Now, when the good strips you say go down to the planer—

A. Yes. The good two by fours.

Q. They are carried by a chain down to the planer? A. Yes.

Q. And are they carried in front of the place

(Testimony of Alvin Waits.)

where the two strip catchers are working, past the strip catchers down to the planer? [80]

A. Well, the strip catcher is directly—they come right out to him and then they leave him going to the left from the way he is facing.

Q. That is the strip catcher is facing?

A. That is right.

Q. To your right and to the strip catcher's left?

A. The strip catcher is to my left.

Q. Now, I don't think I make myself clear. The chain carries the good strips to your right?

A. Yes, that is right.

Q. And that would be the strip catcher's left, because they are facing you?

A. Yes, that is right.

Q. Will you tell me then what is done with the bad strips or the outside strips, the ones that are no good?

A. They are thrown in the hog conveyor.

Q. By whom are they thrown in the hog conveyor? A. The strip catcher.

Q. Will you describe the hog conveyor for me?

A. Well, it's a concern that comes down to the end of the table and it's just a box outfit with a chain running in it.

Q. Sort of a long trough with a chain in it?

A. Yes, elevated.

Q. About how long is the trough?

A. Well, to the hog I'd say it's 40 feet, 30 or 40, some [81] thing like that.

(Testimony of Alvin Waitts.)

Q. And it has a chain running in the bottom of it?

A. Yes, elevated.

Q. And it runs at rather a steep angle?

A. Yes.

Q. Now what is the job of the strip catcher?

A. The job of the strip catcher is to catch the strip and the bad lumber and throw it into the hog conveyor.

Q. Now, are both the strip catchers working in the position so that they can throw the strip into the hog conveyor?

A. Well, there is only one strip catcher and one lumber spotter, but if they let one get by the lumber spotter picks it up and he tosses it in there, if he is accurate enough to hit it; if he don't it falls on his head.

Q. Which man is the strip catcher of the two?

A. The one next to the conveyor. The hog conveyor.

Q. And his job is to toss the strip up into the conveyor?

A. Up into the hog conveyor.

Q. Now, you say that there is a man who works next to the strip catcher?

A. Yes.

Q. And you call him a lumber spotter?

A. Yes. He is the spotter for the trim saws.

Q. What is his job?

A. To spot the lumber up against the straight edge. [82]

Q. That is to straighten it on the chain?

(Testimony of Alvin Waitts.)

A. Yes. For it to trim both ends as it goes through the saw.

Q. And also to pull out any bad lumber?

A. Yes. If any goes by, if he can why he will toss it back to the other fellow and then he'll get it and throw it in, if he don't take a notion to throw it in himself; sometimes they do that, you know. But it is his job to take that out and pitch it right back to him and then he picks it up and throws it into the conveyor.

Q. I see. Now, on any occasion has anything else been done with the strips except throw into that conveyor, hog conveyor?

A. Only when the hog conveyor happens to go down or the motor burn out or something or another, why, then they throw them into the big conveyor.

Q. Where is that?

A. Underneath the table, underneath the table where the lumber comes out to the strip catcher.

Q. That is, if I understand your statement correctly there is a chain which carries the good lumber down to the planer? A. Yes.

Q. And underneath that chain?

A. Underneath these two chains is a big conveyor that goes to the burner. [83]

Q. So that if the strips are not thrown up into the hog conveyor they are thrown down below?

A. If something goes wrong, why, they throw it down below until they get it fixed.

Q. Has there always been a hog conveyor there

(Testimony of Alvin Waitts.)

during the period of time that you have worked at the mill? A. No.

Q. What was done with the strips prior to the time that there was a hog conveyor?

A. Part of the time when we first began we threw them in the big conveyor then they decided to make wood out of their edgings and bad lumber and they put up two—we call them horses, I don't know what you would call them—there is two things for the truck to back under and they are put across crossways and they piled them until they got a truckload and the truck backed up and took them away.

Q. Do you recall when the hog conveyor was put in?

A. Some time this spring, I don't know when.

Q. Some time in the spring of 1943?

A. Yes.

Q. And do you try to keep an eye—or first, are you able to keep an eye on the strip catcher and the lumber spotter in the course of your work?

A. I have to keep an eye on them to keep from covering them up. If anything goes wrong with the planer and they stop [84] the chain, why, I've got to stop too.

Q. Has the speed with which you operate anything to do with the speed with which the strip catcher and lumber spotter have to operate?

A. Well, we all work together, I suppose. If you

(Testimony of Alvin Waitts.)

go too fast, why they have to work faster. If I go fast they have to work fast, naturally.

Q. If you go slower they go slower?

A. It's all governed by the lumber, the way the lumber comes.

Q. Then the strip catcher's job—strike that. If the strip catchers are not handling the lumber are you able to run it through as fast?

A. If they are not handling it they are supposed to handle it. They have got to handle it.

Q. If they don't handle it quick enough does that slow you down?

A. I've got to slow up. If the mill is covering me up I'm paid to run it through there, keep that chain clear.

Q. If it comes to you fast you have to shoot it through fast?

A. That is right.

Q. Now during the period of time that you have been running the edger have there been a number of men working on this strip catcher?

A. Quite a few, yes. [85]

Q. And lumber spotter jobs?

A. Yes.

Q. Do you recall Mr. Leslie Glenn—Lindsay Glenn and Leslie Allan having worked on that job?

A. Yes.

Q. Do you recall approximately what period of time they were working on it, some time in April and May of this year, isn't that right, 1943?

A. I believe so, some time in the spring; yes, this year.

(Testimony of Alvin Waitts.)

Q. Was the hog conveyor installed when they were first on that job, do you remember?

A. I believe it was installed while they were on the job.

Q. Now, have you had an opportunity to observe the work of the men who preceded them, Glenn and Allan and also those who followed Glenn and Allan in that job? A. Yes.

Q. How did Glenn and Allan compare in their handling of the job with the other men?

A. I believe they had done as well as any of them that have ever been there. We have had fellows there that were bad and we have had fellows that were good; then Glenn and Allan were good I thought. That is, I kept the thing going while they were there.

Q. Did they slow down you in your work or were they able to get the strips out of there? [86]

A. Glenn and Allan?

Q. Yes.

A. No, they didn't slow me down any.

Q. Is it possible to throw all of the strips up into the hog?

A. All the long ones, it is possible to throw them in, but the short ones that come out there, sometimes in spite of all you can do you can't keep them from it.

Q. During the period of time that Glenn and Allan were working there did you notice whether

(Testimony of Alvin Waitts.)

or not any of the strips were thrown into the refuse conveyor, that is, while the hog was installed?

A. I didn't see them deliberately throw them in, that is, long ones.

Q. Do you know that others went in, shorter strips?

A. I didn't see them. But that is, I wasn't noticing. But I know they had since then because I worked back there some myself. The short ones they just rake them in there, you know.

Q. That is, you worked—— A. At times.

Q. At times behind——

A. Yes, just to change off with the boys.

Q. Then someone else was running the edger?

A. Yes. [87]

Q. Then during those times did you notice whether or not the strips fell into the refuse conveyor?

A. The short ones sometimes do. They just rake off in there.

Q. What about the men who are working on those jobs now; do they allow any of the strips to fall into the refuse conveyor as far as you know?

A. As far as I know yes. The short ones fall in because every now and then I've got to stop, one don't get all the way down. They have to get up on the table and get it out. I've got to stop for them to get that short one out.

Q. Now, during the period of time before the men, Glenn and Allan were discharged out there

(Testimony of Alvin Waitts.)

was there any trouble with the operation of the chain, the big chain?

A. While they were working there, you say?

Q. Yes.

A. Oh, yes. That chain would bust every now and then.

Q. What happens when it breaks?

A. The chain just parts. Part of it goes one way and part stops.

Q. And the mill has to stop?

A. Stop and repair it. That is right.

Q. Does that happen rather frequently?

A. Oh, yes; every once in a while with the old chain.

Q. Were you able to observe whether or not—strike that. [88]

Q. During the period of time that the mill was operating without the hog conveyor and the strips were being thrown on this large conveyor underneath, did you notice whether or not the chain broke frequently?

A. No, I don't know. I can't remember what they did with the edging before they put that hog conveyor in. I *don't whether* they put that on the horses this year or not. I couldn't say, but I believe they threw them in the conveyor for a while there until they got it fixed. I'm not sure about that.

Q. Can you state whether or not the throwing of the strips into the refuse conveyor; that is, I'm

(Testimony of Alvin Waitts.)

speaking now of the underneath conveyor, not the hog conveyor, would have caused the chain to break?

A. It would if it got under a bucket at the end where it jumped off into the other one. It would cause it to break.

Q. Do you know of any occasion when that occurred?

A. Well, no, really I don't. They said it did, one would get underneath the bucket and break it. I didn't help to fix that out there. I pulled the chain. I had a rope to pull the end back, you know.

Q. How long—strike that. Is the same chain still being used in the mill that was being used at the time Glenn and Allan were working on these jobs?

A. No. [89]

Q. A new chain was installed? A. Yes.

Q. Do you know when that was installed?

A. I don't know the date, no.

Q. Was it shortly after the men were discharged?

A. It was after they were discharged, yes.

Q. Well, how long afterwards, do you remember?

A. No, I don't remember.

Q. They were fired on May the 21st. Was it put in some time in June or July?

A. I believe it was in June. I'm pretty sure it was in June.

Q. Has there been any trouble—as much trouble with the chain breaking since the new chain has been installed?

A. Oh, no.

(Testimony of Alvin Waitts.)

Q. Has there been any trouble at all?

A. I remember it being down twice. One time with a shaft out. And one time yesterday it was broken.

Q. During any period of time since the new chain has been installed has anything happened to the hog conveyor?

A. Oh, yes.

Q. And when something happens to the hog conveyor what is done with the strips?

A. Thrown on the big conveyor and let it go out into the burner. [90]

Q. Is that both the long ones and the short ones?

A. Yes, everything.

Q. Did that throwing of the strip from the big conveyor cause the chain to break?

A. No.

Q. Now, calling your attention to September and October of 1942 did you at that time belong to the Union?

A. No, I didn't belong to the Union.

Q. Did you sign an application card?

A. Yes.

Q. And did you engage in any effort to induce the other employees to sign application cards?

A. Yes.

Q. Did you succeed in signing any of them up?

A. I got about 17 or 18, I think.

Q. When was that?

A. That was in September, I guess. About the 15th or 16th.

Q. Can you fix it with respect to deer season?

(Testimony of Alvin Waitts.)

A. It was deer season was on. They went hunting that day.

Q. Then it was around the 16th of September, 1942? A. Yes.

Q. After you had succeeded in signing a number of the men up did Mr. Pease have anything to say to the men about it?

A. He called us together in front of the office and told us [91] that he'd rather—

Q. Just a minute. We'll have to take it a little gradually. Approximately when was this that he called you together?

A. Oh, I'd say about four days after I tried to sign the boys up.

Q. And what time of day did he call you together? A. In the evening after work.

Q. And how many of the employees were there?

A. Practically everybody.

Q. And you were there? A. Yes.

Q. And what did Mr. Pease say to you at that time?

A. He told us he'd rather we wouldn't join no Union. That he'd rather just have a one big happy family down there and we'd work it out with us and himself and the Company.

Q. Do you remember what else he had to say?

A. He told us that he'd pay us the Union scale and if we did join the Union that there was some was overpaid the Union scale and they would automatically have to come down to the Union scale.

(Testimony of Alvin Waitts.)

Q. Did he thereafter pay the Union scale?

A. Yes. We have never changed.

Q. That is, did he make some change in the wages being paid the men at that time?

A. No, not at that time. [92]

Q. Do you recall speaking to Mr. Pease after he had called the employees together and spoken to them?

A. Yes.

Q. That is you, individually? A. Yes.

Q. And when was that?

A. In the evening; they was running the planer in the evening.

Q. And was anybody there when you were talking to Mr. Pease?

A. No—there was a lot of boys working but they didn't hear the conversation.

Q. Will you tell us what you said to Mr. Pease and what he said to you at that time?

A. He came up watching me on one side, and I had some business with a fellow that was working on the chain. I talked to him a few minutes and I seen him watching me and I asked him "What have you got against the Union?" "Well," he said, "I'll tell you. I don't like them," and he said, "I don't want a damn thing to do with them."

Trial Examiner Ward: Who said that?

The Witness: Mr. Pease.

Trial Examiner Ward: Pardon the interruption. But you asked him, you mentioned the Union first.

The Witness: Yes.

(Testimony of Alvin Waitts.)

Q. (By Mr. Jennings) Did Mr. Pease have anything further to say or did you have anything further to say at that time? [93]

A. He told me—oh, he had a kind of a story that if they got into a strike somewhere else that we'd have to kick in, you know and help save them, and all of that; and oh, that is about all he said at that time.

Q. What happened to your effort to organize the employees then?

A. I didn't then. I didn't organize them, they scattered.

Q. Did you cease your efforts?

A. Yes, I really did because nobody would talk to me about the Union at all.

Cross Examination

Q. (By Mr. Cheney) Mr. Waitts, have you worked there at the mill a long time?

A. Ever since the mill started.

Q. You are one of the oldest employees?

A. Yes.

Q. You have seen the mill during several seasons of operations?

A. Two, yes.

Q. Two seasons of operations which is about the life of the mill; the length of time that the mill is run?

A. Yes.

Q. You have seen it at times when the logs were—you had [94] plenty of logs and things ran along smoothly, and times when they had trouble getting logs and had to shut down?

A. Yes.

(Testimony of Alvin Waitts.)

Q. You had seen it grow from a little, you might say just a little sawmill to now a fairly good sized operation?

A. Yes.

Q. You have seen lots of employees come and go, have you not?

A. Yes.

Q. And your job there in the mill has been with the edger?

A. Practically all the time.

Q. Almost from the time you started?

A. Except about the first week I tailed the edger.

Q. You were employed at the mill when the original chain was installed, or at least the chain that was recently taken out?

A. No, the chain was there when I began to work.

Q. It was there?

A. Yes.

Q. Was it a fairly new chain at that time?

A. No, I think it was old.

Q. At that time and at the time that you worked behind the edger where did you put the strips?

A. At the beginning I put them in the conveyor.

Q. I see. And why did you stop putting them in the conveyor? [95]

A. They wanted to use them for wood and I put them on those racks where the trucks could back under and get them.

Q. Did the conveyor ever have any trouble?

A. When we first began we didn't have much trouble with the conveyor.

Q. The strips went right through?

A. Yes.

(Testimony of Alvin Waitts.)

Q. Did the conveyor ever stop at that time that you can recollect?

A. While I was behind the edger, you mean?

Q. Yes.

A. No, I don't remember it ever stopping.

Q. And at the time of the first summer?

A. Oh, yes; we had trouble with it off and on all last summer, but not as much as we did this summer.

Q. And this year when they started operation in the spring where were the strips first put that were taken from the edger?

A. I believe they were put in the conveyor at the beginning; I believe they were.

Q. From whom did the men get their orders as to where the strips should be put at different times, from whom did they take their orders?

A. Mr. Higday I believe was the foreman, mill foreman.

Q. He would tell them to put them in the edger and they put them in the edger, is that right? [96]

A. In the conveyor, you mean?

Q. I mean conveyor. Pardon me.

A. Yes, that is right.

Q. If he would tell them to put them on these horses why then they would put them on the horses?

A. Well, they taken the horses out this year some time.

Q. Then if he would tell them to put them in the

(Testimony of Alvin Waitts.)

hog conveyor then they would put them in the hog conveyor?

A. Why yes; part of the time when they had the old chain we piled them up at the side of the chain.

Q. Then what would you do with them?

A. Well, they put them in the hog after the hog started. That is after the hog started. I'm talking about.

Q. I see. But Mr. Higday would tell the men at different times where to put the strips?

A. That was his job.

Q. Why did they decide—why did they put them into the hog rather than into the conveyor as they had been previously?

A. Well, they burn better in the burner they claim.

Q. While they were operating this spring I believe you did make mention that the conveyor did stop a number of times?

A. In the spring, yes; up until they changed.

Q. And you stated that the chain broke?

A. Yes.

Q. Did you ever help them repair the chain?

[97]

A. Yes, I pulled back with the rope all of it every time it taken the whole crew to put the rope on and put it back through there, you see.

Q. And where would the chain generally break?

A. At different places. Sometimes it would break at the back end and pass all the way past

(Testimony of Alvin Waitts.)

under the edges, no chain there, it would go on out.

Q. And I believe that oftentimes it would break with strips under the forward end of the conveyor?

A. Yes. If one got under there why it would because it would cause it to break.

Q. Did that happen, too, at times?

A. They said it did. I don't know because when it did the chain went away.

Q. You weren't out there when it broke?

A. No, sir.

Q. You were feeding the edger?

A. At that time I was.

Q. You had no opportunity to go out there to see how it broke? A. No.

Q. They told you how it did and you're taking their word for it?

A. Why sure. We'd put the chain back together and go back to work again. [98]

Q. You inquired how it broke and that is what they told you? A. Yes.

Q. Were there any times when the men were instructed to put the edgings into the hog conveyor or to set them back as you say that strips did get into the conveyor?

A. You mean in the bottom conveyor?

Q. Yes.

A. The short ones always got in there.

Q. Yes, I understand that. They drop off from behind the edger table, but were any of the long ones ever put in there?

(Testimony of Alvin Waitts.)

A. You mean deliberately throwed in back and throwed in?

Q. Yes, thrown in. Were they put in there at times when the hog was in operation?

A. Not deliberately throwed in, no.

Q. Were they ever put there when they were told to place them in a pile behind the edger table?

A. No, if they did the pile wouldn't build up. They build a big pile there, you see.

Q. I see. But were the men ever instructed not to throw those strips into the big conveyor?

A. Yes.

Q. Were they ever instructed not to?

A. Yes.

Q. Did the men ever do it? [99]

A. Ever throw it in?

Q. Yes.

A. No, not deliberately throw them in there.

Q. But they did get in there?

A. The short ones.

Q. The long ones, too? A. I don't know.

Q. You don't know. How is it that you know that the short ones got in but you don't know the long ones got in?

A. Well, if the long ones got in a man has got to pick it up and back up and toss it under the hog conveyor, see; and if a man does that why he's deliberately throwing them in.

Q. But even at that during the times the chain did break you were down, as you stated?

A. Yes.

Q. Both times? A. Yes.

(Testimony of Alvin Waitts.)

Q. And that the men did remark that it broke because of the edging under the far end of the conveyor?

A. They sent a man out there when they had to throw one in to keep them out from under the chain.

Q. Now, you say that you helped to organize the men in the A. F. of L. Union? A. Last year.

[100]

Q. Last year, not this year?

A. Not this year, no.

Q. I see. And that you did sign up some 17 men, you say? A. Last year.

Q. Last year? A. Yes.

Q. And were you a member of the Union at that time? A. Not paid up, no.

Q. Yet you signed the men up?

A. That is right. I tried to.

Q. (By Mr. Cheney) Did you have authority from the Union to sign up those men?

A. An organizer gave me the authority. He gave me the cards. [101]

Q. But you were not a member of the Union at the time? A. No, not at that time.

Q. Did I understand you correctly to say ten days later that Lionel called them together?

A. Approximately that; when he found out they were trying to go Union.

Q. How did he go about calling them in together?

A. He just told them to wait a minute. He

(Testimony of Alvin Waitts.)

wanted to talk to them and they all waited in front of the office.

Q. And then his words were that he would rather not that the men join the Union and if they did they would have to lower wages to the Union scale?

A. He said "We are overpaying some of the Union scale at the present time," and he said, "Some of you fellows will be lowered if we join the Union to get the Union scale."

Q. Was it a fact that the men were paid higher than the Union scale on some of the jobs?

A. Well, I believe the pond was at that time working—on the pond, yes.

Q. After that time—at that time what were you getting? What were your wages?

A. \$1.12½.

Q. \$1.12½?

Q. Were your wages lowered after that time?

A. No. [102]

Q. Do you know of any men whose wages were lowered? A. No, they didn't lower no wages.

Q. You said that the men scattered. You mean by that—just what did you mean by that? Do you mean that the men just wouldn't talk union any more?

A. No. They wouldn't talk Union any more. That is right.

Q. That was to your knowledge all that Lionel told them?

A. Well, they didn't want Union any more, they

(Testimony of Alvin Waitts.)

didn't want no more of it. I guess they decided we was doing all right without it or something.

Q. Well, now, did any man ever tell you that because of what Lionel said that he didn't want to have anything to do with the Union? A. No.

Q. Did that change your affiliation with the Union? A. No.

Q. And you don't know of any man whose activities might have been affected; no man ever told you that what Lionel said was going to make any difference with him, and that he was going to reject his application and so forth?

A. Well, they just wouldn't talk about the Union no more.

Q. No man ever told you that that affected his decision as far as the Union was concerned?

A. No, no man ever told me that.

Q. No, and then at a later time I believe you said that Mr. [103] Pease—that you came to Mr. Pease and said—and asked him what he had against the Union? A. That is right.

Q. You brought up the question to him?

A. That is right.

Q. And he gave you his answer?

A. That is right.

Q. He didn't like the Union and didn't want to have anything to do with it?

A. That is right.

Q. (By Mr. Cheney) Did you feel that Lionel

(Testimony of Alvin Waitts.)

Pease's opinion of the Union was the opinion of the Company toward the Union?

A. I wouldn't have no way of knowing.

Q. But how did you feel about it personally?

A. He was the head of the Company at that time and he was [104] representing the Company that is the only fellow we knew.

Q. Did you know me?

A. I don't even know your name.

Q. I was there approximately last September, August and September.

A. I knew you when you come down.

Q. Did you know Mr. Cheney here?

A. Yes, I knew Mr. Cheney.

Q. Did you ever talk to him or did he ever talk to you about the Union? A. Mr. Cheney?

Q. Yes.

A. He told me it was all right for us to join the Union at one time if we wanted to, it was O.K.

Q. When was that that he told you that?

A. I don't know. Some time last year, I believe.

Q. Some time last year? A. Yes.

Q. And you know that Mr. Cheney, Mr. Ben Cheney is the President of the Company?

A. That is right.

Q. And he told you it was all right?

A. Yes.

Q. Going back a little bit here, do you know why the men that were working behind the edger were

(Testimony of Alvin Waitts.)

told not to throw [105] the strips into that big conveyor? A. They said it caused it to break.

Q. I see. Did the conveyor break after that?

A. Yes. A number of times.

Q. And that was the time when you were told then that the conveyor broke because of the edging being in it? A. After they put the hog in.

Q. Now, I asked you the question first if the men were ever told not to, and you said "Yes." And because the men were told that the conveyor would break if they were thrown in. Did the conveyor ever break after that?

A. Yes, a number of times.

Q. And did you understand at those times, at those later times when it broke that it broke because strips or edgings did get in under the gear at the end? A. I don't quite get you.

Q. Did you understand that the reason the conveyor broke at those later times was because the strips got in there in the conveyor?

A. Not necessarily every time, no.

Q. Not every time, no, but there were times when it did?

A. Well, that is entirely up to the fellows out there. Now, I couldn't say because I wasn't out there.

Q. But you did help repair it?

A. Yes, I pulled the chain back every time it broke. It [106] taken the whole crew to do it.

Q. Yes, I understand.

(Testimony of Alvin Waitts.)

Redirect Examination

Q. (By Mr. Jennings) During 1942 who was the Manager of the Company at Greenville?

A. What?

Q. Manager of the Company's mill at Greenville?

A. Pease.

Q. Lionel Pease, is that right?

A. Yes, Lionel Pease.

Q. Who hired you? A. Lionel Pease.

Q. Who hired the other men out there?

A. Lionel did.

Q. Who did the firing of the men?

A. Lionel.

Q. Who told them what jobs to take, what to do?

A. I believe Jake was last year. When he would hire a man why Jake would take him and put him on his job.

Q. That is when Lionel would hire men Jake Williams would put them on the job?

A. I believe that is right, yes.

Q. And did Jake Williams work as well as supervise? [107]

A. No. He'd help repair and get the mill going you know, here and there.

Q. After Mr. Pease talked to the men did you continue your efforts to interest the men in the Union? A. No.

Q. Or did you stop?

A. No, I stopped. It seems like I kind of got

(Testimony of Alvin Waitts.)

unpopular some way at that time. They wouldn't talk Union at all.

Mr. Jennings: That is all.

Recross Examination

Q. (By Mr. Cheney) Now, you say you got unpopular. Did the men shun you?

A. No, no. They just wouldn't talk Union. You started talking Union and they wouldn't talk no more. No use trying it. They'd say "We can never get a Union here, no use of trying it." So nobody would sign a card.

Q. But the men didn't specifically tell you why they wouldn't talk Union?

A. No, they didn't.

Q. Did you have any—make any effort to organize the Union in the mill this spring?

A. No.

Q. You had nothing to do with that?

A. No, I had nothing to do with it.

Q. Did you sign up with the Union? [108]

Q. The mill was down for a while this spring, was it not; this winter?

A. Last winter.

Q. And you lost some time?

A. Yes. I went down below.


Q. You went down below?

A. And worked below, yes.

Q. Some place else? A. Yes.

Q. When you came back the job was waiting for you?

A. That is right.



(Testimony of Alvin Waitts.)

Q. And you have worked steadily since?

A. That is right.

Q. And have you had any lay-offs since the mill got started?

A. Oh, a few at the beginning. We haven't had many, though.

Q. What were the causes of those lay-offs that you did have?

A. Practically cars I think is the only lay-off we have had. That is, loading cars, you know gondolas.

Q. You said that you did sign up with the Union this spring?

A. That is right.

Q. But you haven't experienced any unusual lay-off or lost any time since that time. There has been no discrimination against you because you did sign up with the Union?

A. Oh, no. Not this year. [109]

Q. Well, did you lose any time last fall from signing up with the Union?

A. Not for signing up with the Union, no.

Q. That is what I wanted to know.

A. No.

ALBERT ROY NORBERG

a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

(Testimony of Albert Roy Norberg.)

Direct Examination.

Q. (By Mr. Jennings) What is your full name, please? A. Albert Roy Norberg.

Q. How old are you, Albert? A. Nineteen.

Q. Where are you working at the present time?

A. Cheney Lumber Company.

Q. How long have you been working there?

A. Since a year ago last either May or June.

Q. May or June of 1942 you started?

A. Yes [110]

Q. And what job have you held out there?

A. Well, to begin with I started pulling green chain out there and a few odd jobs and then later I started driving carrier.

Q. You are driving a carrier at the present time? A. That is right.

Q. Calling your attention to March of 1943 were you working at that time? A. Yes, I was.

Q. Were you driving a carrier? A. Yes.

Q. And do you remember the occasion during March of 1943 when you and Clayton Block were talking about the Union with some of the other men there? A. Yes, I do.

Q. Whom were you talking with?

A. Well, there were several of the boys around there. There was Herman Higday—

Q. Was he the foreman at that time?

A. Yes, he was; and George Christiansen and a few others of the men around there. I really don't recall them all.

Q. Now, on what side of the argument were you?

(Testimony of Albert Roy Norberg.)

A. Well, I was just talking Union and the other boys were non-Union.

Q. What about Clayton Block; what was he arguing? [111]

A. Well, he was for the Union too.

Q. You and Clayton Block were arguing for the Union? A. That is right.

Q. And you say Higday and Christiansen were arguing against it? A. That is right.

Q. How long did the argument last?

A. Well, about, oh, not too long. About a half hour or so. Noon hour, I think it was.

Q. Did Mr. Pease come over there during the time the argument was going on?

A. I really don't recall him coming over there but he was around there at the present time.

Q. At the time the argument was going on?

A. Yes, off and on.

Q. Do you recall what Higday had to say about the Union at that time?

A. No. Not in the exact words, but he was arguing against it. I just don't remember what he said about it.

Q. You don't remember exactly what he said?

A. No.

Q. Do you recall a few days after that Mr. Pease called you into the office? A. Yes, I do.

Q. And what did Mr. Pease say to you at that time? [112]

A. Well, he says that there were three of us that

(Testimony of Albert Roy Norberg.)

were talking too much around there, there was Clayton Block and Leown Ware and myself.

Q. Leown Ware is also known as Ira Ware?

A. That is right.

Q. And what else did he say?

A. And he said if I didn't stop talking too much about things I said, but he didn't say what I'd be talking about, he said he'd have to let me go.

Q. Did you ask him whether he objected to your work?

A. I asked him if my work was satisfactory and he says he didn't know of anything against that but he says I was just talking too much.

Q. Were you fired?

A. Well, undoubtedly I was fired because the following weekend I got two checks, a time check and my other check, I no doubt was.

Q. That is normally you get one check?

A. Yes, that is right.

Q. You say you got two checks?

A. Yes, a time check and the other one.

Q. What do you mean a time check and another one?

A. Well, if you go in and draw your time they pay every Saturday with a week hold-back. I got two week's pay instead of one. [113]

Q. So that you got one closing check?

A. That is right.

Q. And then you got another check for the period following that of the closing check?

(Testimony of Albert Roy Norberg.)

A. Yes.

Q. You actually worked continuously, though, didn't you? A. Yes. [114]

Cross Examination

Q. Were you one of those that signed up with the Union last fall? A. Yes.

Q. And it was commonly known, was it, that you were one of those that signed?

A. Yes, it was.

Q. And of course this spring you signed up with the Union at that time?

A. I didn't sign that paper but I had already signed up with the Union.

Q. That is what I say, you signed up with the Union? A. Yes.

Q. And you haven't experienced any lay-off or any discrimination against you in your job? [117]

A. No, not lately.

Q. You say that you got into an argument with several men at the mill? A. That is right.

Q. On the Union question. How did that happen to come up?

A. Well, there was several of the boys in the shop wanted to talk there. They were arguing about the Union. Clayton Block and I were arguing for it and they were arguing against it.

Q. Who were those that were arguing against it?

A. Well, there was quite a few of them but I

(Testimony of Albert Roy Norberg.)

don't remember all of them. I remember three or four or half a dozen.

Q. That were arguing against the Union?

A. Yes.

Q. You don't remember who they were, though?

A. Well, as I said before there was Herman Higday and Joe Josephson and George Christensen and Kenny DeWitt.

Q. Were you familiar with all these persons; that is personally, you knew them quite well, didn't you?

A. Yes, I did.

Q. Did you ever get into other discussions with them during the noon hour like politics and base ball games and foot ball games?

A. Oh, now and then.

Q. Did you talk about lots of different subjects?

[118]

A. Yes, I did.

Q. And one of those subjects was the Union?

A. Yes.

Q. As is often the case?

A. That is right.

Q. Did Higday in arguing in this Union argument, did he state at any time that the Company felt or had any compunction against the Union?

A. No. But every time we'd talk about the Union he'd sit there and laugh at us and throw slams at it. I don't remember the slams he'd throw and I wouldn't want to say them here.

Q. Was the Company's name mentioned in those; in the profanity you speak of?

(Testimony of Albert Roy Norberg.)

A. He says if we didn't like where we was working and trying to cause trouble is what they thought it was to get the Union in there, why we could go some other place.

Q. He never threatened you with your individual job? A. No, he didn't.

Q. As a matter of fact, you worked steadily right along all the time?

A. Yes. When the mill was working.

Q. Did you know of any other man whose job was directly threatened because he happened to sign one of those union cards; anybody who was told he was going to be discharged? [119] I would like to know, because I'd like to call him to the stand.

A. On account of my signing the union card?

Q. On account of any man that signed the union card. I'd like to know because I'd like to call that party to the stand.

A. I never heard him threaten anyone but myself.

Q. Now, I asked you if you were threatened and you said that you were not threatened. How would you explain that?

A. I misunderstood you then. On the morning he called me into the office that is what he called me in there for, no doubt; because I tried to get out what he called me in there for and he wouldn't tell me.

Q. You mean you were just called in the office and he wouldn't tell you what you came in there for?

(Testimony of Albert Roy Norberg.)

A. He says I was just talking too much.

Q. Did he say what it was that you were saying too much about?

A. Well, I found out what it was because we had argued about the union there and them boys went and told him about it and then he jumped my neck.

Q. Who was this in the office that was talking to you? — A. Lionel.

Q. Lionel Pease? — A. That is right. [120]

Q. You continued and went back and went to work?

A. That is right. My brother went to bat for me there or I'd have been walking down the road yet.

Q. How is that?

A. I say when he let me go there, my brother went to bat for me there and says if I left why he would. That is why I'm there now.

Q. You mean that is the only reason you're there at the plant now? — A. That is right.

Q. Is Mr. Lionel Pease working for the Company now? — A. I haven't any idea.

Q. Well, you know he's not at the plant, don't you?

A. Well, sure but he could be working for the same company though.

Q. Well, he's not at the plant, is he?

A. No.

Q. Is Mr. Higday at the plant?

A. No, he isn't.

(Testimony of Albert Roy Norberg.)

Q. One of those parties that you said argued against the Union is he working there now?

A. No, he isn't.

Q. Is Mr. Williams, another one that you mentioned; is he working at the plant? A. No.

[121]

Q. Is Mr. Christiansen working at the plant?

A. No.

Q. None of those men are—Joe Josephson working at the plant? A. No, he isn't.

Q. None of those men that you allegedly say talked against the Union are working there?

A. No, not that I recall right now.

Q. Then you mentioned that you got two time checks? A. That is right.

Q. What were the dates of those time checks?

A. I haven't looked them up but I could. They're on the books no doubt.

Q. Was that prior to the election or after the election?

A. Well, it was after this argument anyway.

Q. I see. After the argument. A. Yes.

Q. Was that argument before or after the election?

A. I really don't know. I think it was before.

Q. You were signed up in the Union at that time? A. That is right.

Q. What is your draft classification, Mr. Norberg? A. 2-B.

Mr. Jennings: Objected to as incompetent and immaterial. [122]

5

(Testimony of Albert Roy Norberg.)

Trial Examiner Ward: Sustained.

Mr. Cheney: Your Honor, I want to show that this boy who allegedly claims to have been threatened with his job and might have been discharged has been—that an affidavit was filed by the Company asking and requesting that he be left with the Company and allowed to work. That that affirmative action was taken by the Company to keep the man in our employment, because he was a valuable employee to us.

Trial Examiner Ward: The objection will be overruled and I will reverse myself. He may answer.

Q. (By Mr. Cheney) What is your classification? A. 2-B.

Q. When did you receive this 2-B classification?

A. I have had two of them.

Q. Well, do you remember when the first one was given to you?

A. Yes, I do. From December 10th until June 10th.

Q. That was the first one?

A. That was the first one.

Q. And then the second one June 10th for another six months?

A. From June 8th to December 7th.

Q. Another six months each time?

A. Right.

Q. Did the Cheney California Lumber Company request that [123] permit?

A. They asked for it, yes.

(Testimony of Albert Roy Norberg.)

Q. And you received it?

A. That is right. But I have been bribed with that deferment ever since.

Q. I didn't understand you.

A. I have been bribed with that deferment ever since.

Q. Bribed? A. That is right.

Q. I'd like to know what you mean by that. I wish you'd explain yourself.

A. One morning I was standing in front of the office there when Lionel was pretty hot, he came up and looked at me and he says, "There are going to be a lot of deferments that aren't going to be renewed either." That is before I got the last one.

Q. I see. But your deferment was renewed?

A. That is right.

Mr. Cheney: All right.

Trial Examiner Ward: Let me ask, can the Company state just when Lionel left their employment?

Mr. Cheney: Yes, approximately. I think I can state it was about June, around June 20th, and all these men left at the same time.

Q. (By Mr. Cheney) Do you recall asking Mr. Ben Cheney here [124] to get the deferment for you? A. I did the second one.

Q. And the deferment was obtained?

A. That is right. [125]

Redirect Examination

Q. (By Mr. Jennings) At the time you and Block were arguing about the Union was Block working? [128] A. Yes, he was.

(Testimony of Albert Roy Norberg.)

Q. And how long did Block continue to work after this discussion?

A. Well, I really don't remember the date but he went to the hospital one night and when he came back he worked just a little while on the chain and Lionel called him in and told him he had to go.

Q. (By Mr. Jennings) Do you recall whether this time you talked to Pease was about in the vicinity of the time when Clayton was fired?

A. Well, he told me that morning he was going to let Ira Ware and Clayton Block go anyway. [129]

CLAYTON BLOCK,

a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination [180]

Q. Now, did you receive a termination notice?

A. Yes, I did.

Q. From Mr. Pease? A. Yes, I did.

Q. Do you recall what the termination notice said upon it?

A. I got two termination notices.

Q. What did the first one say?

A. The first one said, "Failure to do his work." I believe that is the exact words as I remember. I showed it to a few [189] of the men around there.

(Testimony of Clayton Block.)

Q. Did you take the termination notice from Mr. Pease then when he gave it to you?

A. Yes.

Q. You say you showed it to a number of the men? A. Yes.

Q. Was your father working at that time?

A. Yes, he was, on the two by fours.

Q. Did you show it to him?

A. Yes, him and Glenn, what was on there.

Q. Thereafter did you go back and talk to Mr. Pease further about it? A. Yes.

Q. What conversation did you have with Pease at that time?

A. Well, I got pretty mad. The more I thought about it, the madder I got, and I went back to tell Lionel I didn't think that was very much man in him, firing me for something like that, when he knew, and I knew myself, that I did my work, and so did everybody else in the mill. And he said—I don't know what the conversation was, but anyway he said personally he had nothing against me, but that my work wasn't satisfactory, and I guess we talked there for twenty minutes, and before I left the office I was inclined to believe it myself, the way he talked to me.

Q. Thereafter, did you do anything further? Did you talk [190] to any of the other men about it?

A. Yes, as that conversation went, why, Lionel told me if I didn't think that that was right, I

(Testimony of Clayton Block.)

could ask the men about it. And I told him that I thought I would. And that night Glenn's oiling job was coming up, and the men were called on a meeting there, so when Glenn got through, I asked the men about it.

Q. That is you say at this time, the day you were fired, there was some discussion about whether or not Glenn was to have an oiling job?

A. Yes.

Q. And there was a meeting about that?

A. Yes.

Q. And then after that meeting, you talked to the men? A. Yes, sir.

Q. And what did you ask the men?

A. Well, I told the men, I think there was some of them didn't know I was fired, I told them I was fired, and I asked them all—I tried to, I got kind of sore there and blew up. I messed things up, you might say, but I tried to, and I got—I think I got every one of them personally there, and asked them—I had worked with every one of them during the ten months that I'd worked there, about ten months—and asked every one of them if I did my work or if I didn't, and there wasn't a man there that said that I didn't do my work. [191]

Q. Did you ask Pease then to change your discharge slip?

A. No, I never—oh yes, my discharge slip, yes. I asked him to change that release for me.

Q. Did he agree to change it? A. Yes.

(Testimony of Clayton Block.)

Q. Did he give you a new one?

A. Yes, he did.

Q. He gave you a new one? A. Yes.

Mr. Jennings: I ask that this be marked as Board's Exhibit 3 for identification.

(Thereupon the document above referred to was marked as Board's Exhibit No. 3 for identification.)

Mr. Cheney: No objection.

Trial Examiner Ward: It hasn't been offered yet.

Q. (By Mr. Jennings) Showing you Board's Exhibit 3 for identification, Mr. Block, is that a copy of the termination notice that Mr. Pease gave you at that time? A. Yes.

Q. What did you do with the old notice?

A. Lionel kept that old one.

Q. You gave it back to Lionel Pease?

A. Yes.

Mr. Jennings: I'll offer Board's Exhibit 3 for identification in evidence. [192]

Trial Examiner Ward: It will be received.

(The document heretofore marked Board's Exhibit No. 3 for identification was received in evidence.)

(Testimony of Clayton Block.)

BOARD'S EXHIBIT No. 3

Deliver this copy to the worker at the time
his services are terminated

Use This Form Only for Reporting Terminations
of Service Involving Possible Disqualification

Social Security account number of worker

530-10-0282

Name of worker Clayton Belden Block

Date of this notice 4/5/43

Last date individual worked 3/18/43

Date employer was informed of worker's termina-
tion of service if other than date entered in the
preceding item.....

Employer's name and address must be typewritten
or entered in ink

Cheney Calif. Lbr. Co.

Box 143

— Greenville, Calif.

Do not ask the worker to sign this form

Instructions for the worker appear on the reverse

Termination Notice Concerning

Possible Disqualification

Cause of Termination of Service

Check item 1, 2, 3 or 4, or state the cause of
separation under item 5. Present full explanation
under item 6:

1 ☐ Left voluntarily

2 ☐ Discharged for misconduct connected with his
work

(Testimony of Clayton Block.)

- 3 ☐ Worker not able to work
4 ☐ Worker not available for work
5 ☒ Other cause To take a more essential job in logging industry
6 ☐ Explanation
For Alton Jacks

I Certify that the information given on this form is true and correct to the best of my knowledge and belief.

By LIONEL PEASE

Signature of individual completing
this notice

California Department of Employment
Affiliated with Social Security Board
[193]

LINDSAY GEORGE GLENN,

a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination [223]

Mr. Jennings: Will you mark this card as Board's Exhibit 4 for identification?

(Document above referred to was marked Board's Exhibit 4 for identification.)

Q. (By Mr. Jennings) Showing you Board's Exhibit 4 for identification, Mr. Glenn—

A. Beg pardon?

(Testimony of Lindsay George Glenn.)

Q. Will you look at this card, please, and tell me whether or not that is the pledge card that you signed?

A. That is the card I signed.

Q. Dated March 17, 1943?

A. I see it is. I was a couple of days off, but I wasn't positive about my date.

Q. Did you put that date in?

A. Yes. That is the date. I am quite sure of that. I put the date, and there's my signature. That is my writing.

Q. You signed the card then, March 17, 1943?

A. That is right.

Mr. Jennings: I offer the card in evidence as [238] Board's Exhibit 4.

Mr. Francis Cheney: No objection.

Trial Examiner Ward: It will be received.

(The document heretofore marked Board's Exhibit 4 was received in evidence.)

(Testimony of Lindsay George Glenn.)

BOARD'S EXHIBIT No. 4
APPLICATION FOR MEMBERSHIP
Lumber and Saw Mill Workers
In The
United Brotherhood of Carpenters and
Joiners of America

City—Greenville

State—Cal.

Date—Mar. 27

Name of Applicant—Lindsay L. Glenn

Date of Birth—Feb. 8, 1900

Employed by Cheney Lbr. Co.

L. U. No. 2647

Address—Greenville

I hereby make application to become a member of the United Brotherhood of Carpenters and Joiners of America. In doing so, I of my own free will and accord, hereby authorize the United Brotherhood of Carpenters and Joiners of America, or its representative, or officers to act for me as a collective bargaining agency in all matters pertaining to rate of wages, hours and other conditions of employment.

Signed L. G. GLENN [239]

Cross Examination

Q. (By Mr. Cheney) Mr. Glenn, you stated that your [275] relationship with Lionel Pease when you

(Testimony of Lindsay George Glenn.)

first started to work was—you were on good terms with Mr. Pease when you first started there?

A. Yes, sir.

Q. And that was in February of 1942?

A. I started in February of '42.

Q. And when did you leave the employment of the Cheney California Lumber Company the first time? How long did you work before you left?

A. Where did I work?

Q. Yes.

A. I worked some few days, approximately two weeks at Evans' Mill.

Q. When was—how long was that?

A. That was in '42.

Q. I see. But what time of the year, what month?

A. I don't remember what month it was. I would say in March, something like that. I don't remember the month.

Q. And you quit work at the Cheney California Lumber Company; went to work for Mr. Evans?

A. Yes.

Q. What was Mr. Evans doing? What was your position with Mr. Evans?

A. I went out there to build a mill. Mr. Pease came to me and he says, "Glenn," he says, "there is an awful good deal [276] on out here at a place," he said. "You might be interested in it, being that you have run sawmills," he said. "I am interested in it myself," he says, "I may get ahold of it myself later on."

(Testimony of Lindsay George Glenn.)

He says, "You can get—you can contact the mill, get it on a contract basis."

And he said, "We can handle the lumber here," and he said, "I believe that there is a good piece of money in it, if you are interested," and I says, "Where is it at, Lionel?"

He says, "It's at Genesee."

I says, "I'm afraid of that logging proposition. I know that country pretty well up there."

He said, "No, the old man is really fixed up to where they can get the logs and put the logs there."

"Well," I said, "if it is that way I wouldn't mind something like that."

And he said, "He's coming in the morning."

He said, "If you're interested, and want to go out there," he said, "I'll bring him around where you're at," and he did.

Q. So you went to work out there?

A. Yes, sir.

Q. And how long did you stay out there?

A. Something like two weeks.

Q. And then what was your next move? [277]

A. I come back and went to work with Lionel. Lionel told me at the time I left, he said, "Glenn, if you want to go out there and"—he told me that—

Q. You felt that that was a friendly gesture on Lionel's part?

Mr. Jennings: I object to the interruption. He hasn't finished his answer.

(Testimony of Lindsay George Glenn.)

Trial Examiner Ward: Let him finish the answer.

A. (Continuing) He said, "Glenn, if you want to go out there," he said, "We'll put it this way: About all the time you'll lose is going," he said. "You won't lose no time, you might say." He said I wouldn't lose no time from coming from his place back to him.

He says, "I'll put you right back here."

Q. So you came back to work at the Cheney California Lumber Company? A. I did.

Q. And Lionel offered you the job of sawing then at the Cheney California Lumber Company?

A. Lionel offered me that job.

Q. And then you refused the job?

A. Well, under some——

Q. Then you worked at different jobs around the mill and then you were put on a filing job after hours, were you not, while you were strip catching, I believe? [278]

A. Yes, I had some filing to do.

Q. You had extra-hour work to do?

A. I finished the edger saws after they went down, you know.

Q. And when was that? Was that in 1942 and '43, or just when was it? When did you have this extra work filing?

A. Well, I believe that was summer, last summer; I don't remember.

Trial Examiner Ward: When you refer to last summer you mean the summer of 1942?

The Witness: '42, yes.

(Testimony of Lindsay George Glenn.)

Q. (By Mr. Cheney) Then as I understand it, you came to Lionel and told him you didn't think that you had better do that extra filing work there, and do that extra work those extra hours and so you quit that extra work, did you?

A. I told him I felt that one man should have all the filing, yes.

Q. So you quit then, and you gave up that extra work that was offered you? A. Yes.

Q. Then when winter came along the mill shut down and you were offered two or three days of work a week, were you not?

A. Yes, there wasn't nothing signified. He said there wouldn't be much work. Said there might be two or three days. [279]

Q. And you made the statement that you would rather be on unemployment than work three days a week?

A. I says, "Lionel, if it's all right with you I can work elsewhere, and work steady." I said, "As far as two or three days, I can't really get by on that," and I said, "That wouldn't be much more than unemployed."

Q. You said that you would rather be on unemployment?

A. I didn't say I'd rather because if I'd had I'd have got on it. I have rode my unemployed just as little as any men in this town, and I could have rode it every year, you know. I always try to work.

Q. You made the statement that you were fighting the union at first? A. In '42.

(Testimony of Lindsay George Glenn.)

Q. In '42 you were fighting it?

A. Pardon?

Q. You were fighting it in '42?

A. When did I do it?

Q. You were fighting it in '42?

A. I didn't exactly fight the Union, but I said, "Boys, we don't need it," in front of the whole gathering, at the time Mr. Pease said we didn't want it.

Q. Now, getting back to the strip catcher job that you had, which job did you have? Did you have the one that cut the strips or the ones that straightens the two by fours? There are two jobs behind the edger as I understand it, and [280] which was your job?

A. Well, the last time I was on the right hand side.

Q. You were the strip catcher?

A. Yes, sir. That is where I was last.

Q. And Mr. Allan had the job of straightening the two by fours, is that correct?

A. That is right.

Q. And it was your responsibility to take the strips and it was Mr. Allan's responsibility to take the two by fours?

A. Yes, sir.

Q. And it was your job to take those strips and put them where they were supposed to be and Mr. Allan would put the two by fours where he was supposed to put them?

A. Yes, sir.

Q. And if the strips got into the conveyor or any place else, why, that was your responsibility?

(Testimony of Lindsay George Glenn.)

A. No, sir.

Q. Did you go over and straighten two by fours for Mr. Allan? A. Yes; we worked together.

Q. And he came over and took strips for you, too?

A. Yes, sure; he'd catch some strips. The jobs worked together: We would have to at that time.

Q. And it was your job, however, mainly, with the strips? [281] A. That was my job.

Q. That was your responsibility?

A. I was on the strip side, yes; that was my job.

Q. Now, you mentioned something about a committee that was to inspect a working agreement, and on this committee was Mr. Williams, Mr. Major and yourself; is that right?

A. That was right.

Q. And you inspected this working agreement?

A. Yes, sir.

Q. Was there anything in that working agreement that seemed to be contrary to the Union belief or Union affiliation?

A. Why, it was better than the Union.

Q. It was even better than the Union?

A. Yes, sir.

Q. You liked it?

A. There was nothing the matter with it.

Q. There was nothing there that you would say had anything to do with discouraging you from belonging to a Union?

A. Sure not. It was better than a Union if he'd have lived up to it.

(Testimony of Lindsay George Glenn.)

Q. But on this committee there were men that were selected by the men themselves and Lionel had nothing to do with the selection of these men?

A. No. [282]

Q. You say that you wore a Union button after you signed up with the Union? A. I did.

Q. Did Mr. Pease ever criticize that button that you wore?

A. I never heard him say one word.

Q. Mr. Pease was in charge of the mill, wasn't he? A. Mr. Pease was the foreman.

Q. Did Mr. Ben Cheney, the president of the Company, ever criticize that button that you wore?

A. I don't know if he even seen it, and he sure didn't criticize it, no.

Q. Did Lionel ever tell you not to join the Union, that you definitely could not join the Union?

A. No. But he always said he didn't want the Union.

Q. Did you understand that to be Lionel's own personal opinion about the Union?

A. No, I didn't. I didn't know whose opinion it was. Of course, I knew Lionel was running the mill, and that is all I knew.

Q. And he told you—he didn't tell you not to join the Union but he said he'd rather that you did not join the Union? [286]

A. That is right. Or, in other words, he'd shut it down if it went Union.

Q. Did he tell you that he would shut that mill down if it went Union?

(Testimony of Lindsay George Glenn.)

A. Mr. Pease certainly told me in plain words that if it went Union he would shut it down.

Q. Did the mill go Union?

A. It hasn't yet.

Q. Didn't you sign up; didn't you say that you signed up some thirty men?

A. I said I had signed something like, I'll say 30 cards or more out of about 40.

Q. You told Lionel you had done that?

A. But he refused those cards and wouldn't have them. He says the cards are not worth a damn.

Q. Did Lionel ever shut the mill down for that reason?

A. Why, no, it hadn't went Union, you know.

Q. He never shut the mill down?

A. No, because it hadn't went Union. He would if it went Union, he said.

Q. Did Lionel ever threaten to fire you if you joined the Union? A. No.

Q. Did you ever hear him threaten to fire anybody else if they joined the Union? [287]

A. The worst I ever heard Lionel say was speaking of Mr. Ware, that if he got into the Union, he might not be able to get rid of him.

Q. If who got into the Union?

A. Mr. Ware, Ira Ware. [288]

Q. Did Lionel ever tell you that the Company did not want the men to join the Union?

A. Lionel, as I stated before, told me that he didn't want no Union.

(Testimony of Lindsay George Glenn.)

Q. He didn't want any?

A. And they didn't aim to have no Union, and that before they would have, they would shut it down.

Trial Examiner Ward: The question was, did he ever tell you that the Company didn't want a Union?

The Witness: He didn't mention the Company. He said, "I don't aim to have a Union."

Q. (By Mr. Cheney) Did he ever mention the Company in any [291] of these discussions about the Union? A. No.

Q. And did Mr. Ben Cheney here ever mention any Union activities to you? A. Mr. Cheney?

Q. Yes. A. No.

Q. Did Lionel ever tell you that he would fire you, or that he did, after you were fired, that he did fire you for Union activity?

A. Sure not.

Q. He told you that he did fire you because----

A. I couldn't do a job in the mill.

Q. You couldn't do a job in the mill?

A. Not a one, is what he said. It took a year and a half to learn that. [292]

Q. Now, going back to the time that you were working as a strip catcher, the last job you held at the mill, you stated [294] that the conveyor chain broke numerous times while you were working there. A. That has always done that.

Q. And that Mr. Higday told you not to throw

(Testimony of Lindsay George Glenn.)

the edgings into the conveyor while the hog was running? A. Yes, sir.

Q. Now, did he ever tell you to put edgings—when the hog was down, did he ever tell you to put the edgings some place else?

A. He had told you, you know, as I stated before, to throw them back behind.

Q. Did you always do that when the hog was down? A. Yes, but that day you couldn't.

Q. That day you couldn't do it?

A. As I told you, the lumber was way up over there and I told the planer man I was just going to let them through. I says, "I can't do nothing else with them, Earl." He says, "Glenn, you're not going to do that." And I says, "You go see somebody and let's get it straight some way, because I'm not going to throw them in there, and Earl—I don't know what happened. Anyway, he come back after a while, and he said, "Boy, don't you let some strips go through the planer." And I said, "Well, Earl, I don't want to make it hard on you, but it ought to be adjusted some way." I says, "You better see somebody, because I don't aim to put them [295] inside that conveyor."

Q. That day the chain broke several times, I understand.

A. No more than usual. The chain was always broken.

Q. And Mr. Higday came to you, did he, several times? Three times, I believe you said.

(Testimony of Lindsay George Glenn.)

A. I think something like three times.

Q. To tell you to quit throwing them in there?

A. He says, "Glenn, quit throwing them strips in there," and I says, "Herman, I'm not doing that." And the last time he said it pretty harsh, and I said, "Why don't you jump onto that man over there?"

Q. You mean Mr. Allan?

A. And he says, "I will." And I says, "Tell him your troubles. Don't tell me, because," I says, "Herman, I'm not putting them in there."

Q. Mr. Allan was throwing them in, inside?

A. Yes.

Q. And Mr. Allan was working on the side that straightens the two by fours at that time?

A. Yes.

Q. Not the strip catcher?

A. Yes, sir. May I make this expression, "You know there is a time when maybe the strips will come out there, which if there is two strips is all any man had to get is a cinch. But perhaps, you know, the bad lumber will come through [296] there. There would be four, five or six two by fours and not a one of them any good. Well, I'd just stand there and get every one that I could get, and during that time they're traveling away from you all the time, and then Mr. Allan would get whatever he could get.

Q. Mr. Waitts, I believe that feeds the edger, is that right?

(Testimony of Lindsay George Glenn.)

A. Mr. Alvin Waitts, yes, sir.

Q. And was he usually considered—he wouldn't snow you under. He'd watch and see that you got the things away? A. He tried to be, yes.

Q. He tried to give you every consideration he could? A. Yes, sir.

Q. He'd give you time to get those away?

A. Yes, but he stated yesterday if they put it to him, he had to get rid of it somewhere. It had to go. He got rid of it.

Q. I believe you stated that at the end of the day, the conveyor broke the last time?

A. I beg your pardon?

Q. The conveyor broke at the end of the day, just before quitting time of the last day of work that you had there?

A. I don't believe I made that information. If I did, I don't remember it. I don't remember it broke the last minute that I worked there. I don't remember that.

Q. But you do remember that it broke that day, and that [297] there were strips——

A. Well, as I stated, it broke practically every day. He hardly ever got to run a day unless that chain did break. Don't make any difference whether I was behind it or somebody else. The chain broke practically every day. You can talk to any of the men and find that out.

Q. The chain was getting worse all the time, I take it?

(Testimony of Lindsay George Glenn.)

A. Sure it was. And the chain, as I stated before, in my estimation is too high speed. The thing was running fast, and a very poor job of putting in the rollers back behind. Just a little old short space there, and the building sitting right on top of that, you know, and if anything come in under that chain, it would hang it right there.

Q. For instance, like a strip would get under it?

A. Yes, if it would get under it, a strip or a slab or anything, of course.

Q. And it was found—you knew, did you not, that the chain would break if edgings would get caught in there? A. Beg your pardon?

Q. Did you know that the chain would break if strips would get caught in there?

A. Well, we'd say you could run maybe an hour or two hours, and maybe it would go in there, and maybe just a little—maybe a long one wouldn't break it, and maybe just a short one would fall off and break it. More or less, the short [298] ones is all that did break it. Two-thirds of those, you know, would fall off on the left hand side there, which there is no other place to go, and even couldn't reach them, and it was impossible for me to, and the short strips you would always find, is mostly what broke the conveyor, because they couldn't get around. The building set so close to the roller there that they couldn't get around the frame. [299]

(Testimony of Lindsay George Glenn.)

Redirect Examination

Q. (By Mr. Jennings) You referred in your testimony to the fact that Higday was around talking to you a number of times on May the 20th, the last day you worked? A. Yes, sir.

Q. During the period of time that you worked at the mill, had the foreman been in the habit of riding you about your work, coming around criticizing you?

A. No, sir, they hadn't been riding me. [300]

Q. (By Mr. Jennings) What I'm asking you is whether the times that Mr. Higday talked to you were increasing as time went on, or whether he'd always been riding you while you were working out there?

A. No, he hadn't always been riding me. No, he wasn't—

Q. Now—did the amount of his riding you or the amount of his criticism increase or decrease in the period shortly before you were fired?

A. For some unknown reason, he seemed to be pretty harsh that last day. I didn't know why.

Q. How do you mean, he seemed to be pretty harsh?

A. Well, he'd just speak pretty hard, you know, and I'd make a statement every time he'd say I said, "Don't put those things in there." And I said, "Herman, I'm not putting them in there."

[301]

Q. Was his attitude on that last day any different than it had been?

(Testimony of Lindsay George Glenn.)

A. That is what I was speaking of.

Q. Had your work been criticized at all at any prior time while you had been working out there? That is, before this period that we're discussing now? Had he criticized your work—had Pease criticized your work, or had Jake Williams?

A. Pease had bragged on my work at one time. I offered to let Mr. Hall come back to fall, and he says, "Glenn, you're falling is A-1," he says, "I'd rather have you than any man I've seen." He used to brag on me.

Q. Before this last period of time in which you say Higday was riding you or criticizing your work, had there been any criticism of your work?

Trial Examiner Ward: You can answer that yes or no.

A. I didn't know of any criticism except on the last go around there. It was worse that day than any other day. Just what I stated.

Q. Do you recall any statements that Pease made to this committee when you were discussing this wage scale about the Union? That is, you told Mr. Cheney when he was questioning you that you thought, as you understand it, that this wage scale he offered you was better than the Union and had no effect on the Union? [302]

A. That is what Mr. Pease was stating. We were talking about it. He says, "Boy," he says, "I've got a working agreement wrote out here that I want you to inspect it and see what you think about it."

(Testimony of Lindsay George Glenn.)

And he said, "You boys look at it and then go out and make a report to the other boys to see what you think, what they all think of it, and then report back to me later." And as we spoke he said, "Well, I told them I saw some of the boys"—we'd all been discussing seniority that evening. Even a sawyer would come out. He'd be apt to put him at a pick and shovel. And I said, "Some of them don't really care for that, Lionel," I says, "I've heard that very remark." "That is no more," he says, "I'm granting seniority on the job. If a man has got a day's seniority over the other man, it's his job to choose."

Q. During this discussion, did Lionel Pease say anything to the committee about the Union?

A. Oh, yes, during those times he said, "You know that I have granted seniority and a wage raise," he says, "I don't see what you want of a Union." I said, "Well, I guess we don't if you're going to grant seniority, Lionel, and a wage raise."

Q. Did Pease say anything more?

A. Well, Pease told me, as I said various times, but I won't swear to that very date, but he told me in person that he would not have a Union. He wouldn't recognize a Union, [303] wanted no part of them.

Recross Examination

Q. (By Mr. Cheney) Did you talk to Ben Cheney, or did Ben Cheney talk to you the last day of your working in the mill?

A. About my work? He did not.

(Testimony of Lindsay George Glenn.)

Q. No, I say, did he talk to you the last day of your work? Did he come up and talk to you?

A. I don't remember. He might have come up and spoke to me or said something.

Q. He might have talked to you the last day?

A. He could have, but I don't think so.

Q. Think real hard.

A. I don't think so at all. No, sir, I would say no.

Q. Did he say anything about those strips?

A. No, he didn't. He sure didn't say nothing to me about that.

Q. Did you see him there at the plant the last day?

A. I seen Cheney around there, around the plant first one place and another.

Q. And you never talked to him?

A. I never talked to him about no job, no, sir.

[304]

Q. No, about those strips? A. No, sir.

Q. Do you remember him coming up to you and saying, "Please don't throw those strips in there."

Do you remember those words?

A. No, I don't. I don't, I do not.

JOHN LESLIE ALLAN,

a witness called by and on behalf of the National Labor Relations Board.

Direct Examination

Q. And where are you employed at the present time?

A. Yuba Manufacturing Company at Benicia, California.

Q. How old are you, Mr. Allan?

A. Thirty-three.

Q. What do you weigh? [305]

A. About 210.

Q. How tall are you? **A.** Six feet.

Q. What is your occupation, what has been your principal business or occupation?

A. Meaning from when?

Q. Well, all of your life. What has been your principal business? **A.** Lumber industry.

Q. How long have you been working in the lumber industry? **A.** Well, around twenty years.

Q. Did you ever work for the Cheney California Lumber Company? **A.** Yes.

Q. When did you go to work for them?

A. Well, offhand about the middle of April.

Q. 1943? **A.** Right.

Q. How did you happen to come to work out here?

A. My brother-in-law was working here, and I was discharged from the army—

Q. Kenneth Blair was working here?

(Testimony of Leslie Allan.)

A. I was discharged from the army 14th day of March, '43, and I'd been working in California the previous year, so I decided I might come up here and try the lumber industry [306] and my wife wrote him—wrote Kenneth Blair if I might get a job up here right away, and I got a return letter that I could.

Q. And you came out here then and went to work? A. That is right.

Q. Then when you came out here, who did you go out to see? A. Lionel Pease.

Q. And who put you to work?

A. Lionel Pease.

Q. What job were you put on?

A. Slasher saws, running the slasher saws.

Q. Now, at the time you went to work, did you have any conversation with Mr. Lionel Pease?

A. Very little. Nothing of interest.

Q. At the time you came to work, were you a member of the Union? A. Yes, sir.

Q. And did you have any conversation with Pease about that?

A. I asked Pease if the job was Unionized or not, and he said no, and I told him, I says, "Well, the reason for asking, I'm a Union member, and I wanted to know." But I says, "It won't interfere with my work."

Q. All right. Now how long did you continue to work on the slasher? A. Two days, I believe.

[307]

(Testimony of Leslie Allan.)

Q. And then where were you put?

A. Behind the edger.

Q. And what was your job?

A. Well, some call it falling, some call it grading, but it was taking care of the good lumber, straightening it on the chain.

Q. And you were working on the left of Lindsay Glenn, is that right? A. That is right.

Q. The two of you were working alongside of each other behind the edger?

A. That is right.

Q. Now, when you went to work on this strip catcher job, was there any hog conveyor installed?

A. Not in use, no.

Q. And what did you do with the strips when you first came to work?

A. Went in the conveyor.

Q. How did you have to dispose of them?

A. Well, the ones that I taken care of, just turned them around and throwed them back in the conveyor.

Q. Now, what was your job principally when you were a lumber spotter or grader there? What was your principal job?

A. Seeing that the lumber was back against, you might [308] call it the butt-boards that both saws ~~could~~ hit each end of it, and kept bad lumber from going through the saws.

Q. You had to pull off the bad lumber if it got past the strip catcher? A. That is right.

(Testimony of Leslie Allan.)

Q. Now, what length were these strips when they came by you there?

A. Approximately eight feet.

Q. Were there any short ones?

A. Some, yes.

Q. And how short would they be?

A. Well, they run from three to six feet.

Q. Now, how wide across is this chain that you were working on, these rollers, how wide across is that?

A. The live rollers?

Q. Yes.

A. I would say three and a half or four feet.

Q. I mean that these strips run along on. They run along on the rollers, don't they?

A. I don't beleive I understand you.

Q. I don't think you do, either. You were working in behind the edger?

A. Yes.

Q. Now, are there rollers that carry the strips or boards past you over to the planer? [309]

A. Yes.

Q. And there is a table upon which those rollers run?

A. Yes, you're speaking of the live chain?

Q. Yes. Now how wide is that table upon which these rollers are or this live chain, as you call it?

A. I'd say seven feet.

Q. About seven feet wide?

A. Yes.

Q. Now, when the short strips come out, what part of the table do they fall on?

A. They come out from the saws, they stop between the live rollers before they get to the chain

(Testimony of Leslie Allan.)

as a general rule, not in every case, but as a general rule they stop on the edger table.

Q. Now, if you wanted to get one of those short strips over there, how would you go about it?

A. Up on the table.

Q. Climb up on the table and get them?

A. That is right.

Q. Were you always able to climb up on the table and get the short strips?

A. Well, if the lumber wasn't coming through too fast, I could do that.

Q. If you couldn't get to them, what happened to them?

A. They fall off into the conveyor, come over the first [310] live chain into the conveyor.

Q. They'd drop in of their own accord?

A. That is right.

Q. You stated that when you first went to work there, you threw the strips into this conveyor?

A. Yes, sir.

Q. After you had been working there a while, was this hog installed? A. Yes, sir.

Q. As Mr. Waitts and Mr. Glenn described it?

A. Yes, sir.

Q. And what were you to do with the strips after the hog was installed, and did you receive any instructions about it?

A. I did to put all possible strips into the hog conveyor.

Q. Now, when you were working on Mr. Allan's

(Testimony of Leslie Allan.)

or Mr. Glenn's list, how would you go about tying a strip up into the hog conveyor? What would you have to do? A. I threw it over his head.

Q. And did you do that very often?

A. Quite often.

Q. Did it cause any difficulty? A. Sir?

Q. Did it cause any difficulty?

A. Quite a bit. It would get tiresome. [311]

Q. And any other trouble?

A. Once in a while one of them would bounce off, and he'd have to dodge it. Other than that, that is about all.

Q. Now when this hog conveyor was first installed, did you have any conversation with Higday about what you were to do with the strips, the foreman?

A. Yes, he said put all possible into the conveyor—into the hog conveyor.

Q. And did you have any discussion with him about what you were to do with the strips, or did you tell him what you were going to do with them?

A. I told him that what I couldn't get on the hog conveyor, I would put in the main conveyor.

Q. What did he say to that?

A. He said put all possible into the hog.

Q. All right. Now did you continue to thereafter throw some in the hog conveyor and some on the conveyor underneath? A. That is right.

Q. Did you have any further conversation with Higday after that?

(Testimony of Leslie Allan.)

A. Not until they boxed the conveyor up.

Q. What happened at that time? What do you mean, they boxed the conveyor up?

A. They taken boards and slowed the conveyor to my left, [312] and then up to where I couldn't—where the short ones, nor none of them could go in under.

Q. They boxed it over so that it would be impossible for strips to be thrown into the conveyor?

A. That is right.

Q. And likewise it would be impossible for them to drop in? A. That is right.

Q. Now, what happened after the conveyor was boxed up?

A. Well, I started to work the morning that they boxed it following the previous night, and the short ones come in there and stopped the lumber. It wouldn't let it go on down on the chain. I'd jump up there, and I did that for about forty-five minutes and it got monotonous, so I told Higday, "Only one of two things you can do. You can take that floor off to where those short ones go through, or else I have quit." And he says, "I'm damned sure not taking the floor off." And I says, "Well, take it and go to hell with it."

Q. What did you do then? A. I quit.

Q. Did you get a release? A. No.

Q. Did you stay around for a while and watch the operation? A. Yes, sir. [313]

(Testimony of Leslie Allan.)

Q. After you quit? A. Yes, sir.

Q. What happened?

A. They put two of the best men that they had behind there, that is the best men that knew how to handle lumber could handle more lumber to see if it was necessary to take the floor out or not.

Q. Who did they put behind there?

A. Norberg.

Q. Is that Harold Norberg?

A. Yes, sir, and if I'm not mistaken, Swanson, but I don't know his given name.

Q. Otto Johnson?

A. It was Norberg's brother-in-law.

Q. Yes. Now, did you watch Swanson and Norberg as they tried to do this job?

A. Yes, sir.

Q. What happened to Mr. Glenn?

A. They put Mr. Glenn on a different job, and I believe on the green chain.

Q. Did you watch Swanson and Norberg while they were doing the job? A. Yes, sir.

Q. How did they get along?

A. Not too hot. [314]

Q. What happened then?

A. The mill only run about—oh, an hour and fifteen minutes after I quit, and something went haywire some way and they shut down for the day.

Trial Examiner Ward: Did it go haywire on this conveyor operation or some place else in the mill?

(Testimony of Leslie Allan.)

The Witness: I wouldn't be positive, but I do believe the motor burned out. I believe that was right.

Trial Examiner Ward: Pardon the interruption.

Mr. Jennings: Certainly.

Q. (By Mr. Jennings) Now, did you come back the next day and get your release?

A. Yes, sir, I come back the next day after my release.

Q. And did you talk to Higday?

A. I was out under the shed. I walked out under the shed just watching them start operations, and Higday came to me and asked if I wanted to work, to take my job back. I told him under one condition I would take it back, and I said, "If I could throw these strips under the conveyor that it is impossible for me to get in the hog, I'll take it back. Otherwise, no soap."

Q. What did Higday say?

A. To take the job.

Q. Did you go back to work then?

A. That is right. [315]

Q. Did Higday say anything to you about throwing strips in the conveyor, or throwing them in the hog after you went back to work?

A. No, sir.

Q. Did Higday or Pease ever tell you that you were to throw strips in the hog and not to throw any in the conveyor?

A. No, sir.

Q. Did they speak to you at all?

(Testimony of Leslie Allan.)

A. No, sir.

Q. Say anything to you about it?

A. No, sir.

Q. Did you throw any strips on the conveyor during the time that you worked there?

A. I did.

Q. After you went back? A. I did.

Q. Did you do it when Higday was there?

A. I couldn't say because I didn't make it secret that I was throwing them under there, but I'm positive that he saw me.

Q. Did you have any more difficulty with the chain during this period of time that you were tying some strips in? A. No more than usual.

Q. Now you told me that when you came to work there you [316] informed Pease that you were a member of the Union? A. That is right.

Q. That is the United Brotherhood of Carpenters and Joiners, isn't that correct?

A. That is right.

Q. You were a member of that organization?

A. Yes, that is right.

Q. Now, you recall at some time after you came to work, you signed a new card for the Lumber and Sawmill Workers? A. That is right.

Q. Do you remember the date upon which you signed that card?

A. I wouldn't say positive, but I believe it was 27th of April.

(Testimony of Leslie Allan.)

Q. You believe it was the 27th of April?

A. Yes.

Mr. Jennings: Will you mark this card as Board's Exhibit 5 for identification, please?

(Thereupon the document above referred to was marked as Board's Exhibit No. 5 for identification.)

Q. (By Mr. Jennings) I show you Board's Exhibit 5 for identification and ask you if that is the card that you signed? A. That must be.

Q. Is that your signature on it? [317]

A. It must be.

Mr. Jennings: I'll offer the card in evidence as Board's Exhibit 5.

Trial Examiner Ward: It will be received.

(The document heretofore marked Board's Exhibit No. 5 for identification was received in evidence.)

(Testimony of Leslie Allan.)

BOARD'S EXHIBIT No. 5

Application for Membership

Lumber and Sawmill Workers

In the

United Brotherhood of Carpenters and Joiners
of America

Date 4/15/43

City—Greenville

State—Calif.

Name of Applicant—Leslie Allen

Date of Birth—12-26-09

Employed by—Cheney Lbr. Co.

L. U. No. 2647

Address—Greenville

I hereby make application to become a member of the United Brotherhood of Carpenters and Joiners of America. In doing so, I of my own free will and accord, hereby authorize the United Brotherhood of Carpenters and Joiners of America, or its representative, or officers to act for me as a collective bargaining agency in all matters pertaining to rate of wages, hours and other conditions of employment.

Signed J. LESLIE ALLEN

Q. (By Mr. Jennings) Was that approximately the date that you signed the card, April 15th, 1943?

A. What date?

Q. The card bears approximately the date you

(Testimony of Leslie Allan.)

signed it—the reason I ask is that you said you thought you signed it on the 27th, and that is dated the 15th.

A. Well, I must have been mistaken, then, in the date.

Q. You signed it sometime during April of '43, anyway? A. That is right.

Q. Now, after you went to work there, did you engage in any activity on behalf of the Union?

A. Only one time.

Q. When was that?

A. Well, I don't know what month it was.

Q. Well, do you remember—would you remember if I told you that the election was held out there on the 22nd of May? A. That is right.

Q. All right. Now fixing that date in your mind, when [318] did this activity that you engaged in take place?

A. Well, it was before that some few days.

Q. Well, what happened? What was going on at that time? A. You mean with the Union?

Q. Yes, that is right.

A. There were three different guys on the job, that the different ones handling the Union seemed to be afraid to approach, and they wanted me to go talk to them, and I did so.

Q. You talked to those three men about what?

A. About joining with the Union.

Q. Were they men who were not signed up in the Union? A. That is right.

(Testimony of Leslie Allan.)

Q. Did you succeed in signing any of them up?

A. One. The other two said no.

Q. Now, do you recall that on the 19th of May, just a few days before the consent election was held, Miss McElroy, the Board's Field Examiner, came out to the mill?

A. That is right.

Q. And there was a conference with Mr. Pease and Mr. Wyatt in the Company's office?

A. I do.

Q. You recall that you were standing around at that time? You were with a number of the other men?

A. Yes, sir. [319]

Q. Now, did you hear anything at that time with regard to the date of the election?

A. I believe she said at that time—said that it would be the second of May or the second of June, I think is when she set the date.

Q. How did you hear that?

A. She told—she came up and told the guys, you know, a crowd of us.

Q. Yes.

A. Said, "We'll have the election the second day of June."

Q. And what did she do then?

A. She went back to her car and sit down.

Q. Where was the car?

A. In front of the Company office.

Q. And what did you do?

A. Well, I didn't think that it was necessary to wait that long for a Union under the conditions, so I went over and talked to her.

(Testimony of Leslie Allan.)

Q. What did you say to her?

A. I asked her if there wasn't a possible chance to get the election to come off sooner than that date.

Q. And did you have a discussion with her about it at that time? A. Yes, sir.

Q. And what did you ask? [320]

A. I asked her, I said, "It seems like it was useless to wait that long," that we couldn't stay there the way things were going if we couldn't get a Union quicker than the second day of June.

Q. Did she thereafter go back into the office?

A. I wouldn't say where she went. She stepped out of the car pretty speedy like, and was out of sight for a few minutes.

Q. Now, did you thereafter hear that the election had been set for another date than the second of June? A. I did.

Q. What date was it set?

A. The 22nd, the following Saturday.

Q. The following Saturday? A. Yes.

Q. Now, calling your attention—by the way, this incident with respect to the consent election took place on May 19th, that is correct, isn't it? The date the consent election agreement was signed?

A. Yes, sir.

Q. Now, the following day was May the 20th. Now, you came to work on May the 20th?

A. That is right.

Q. And what job were you on at that time?

(Testimony of Leslie Allan.)

A. Lumber spotter behind the edger. [321]

Q. You were on your regular job?

A. Yes, sir.

Q. And did Mr. Higday say anything to you about your job on that day?

A. Well, he told me that they wanted to see me in the office.

Q. I'm talking to you about the 20th. That is the last day you worked.

A. The 20th?

Q. Yes.

A. No, sir.

Q. Did Mr. Higday talk to you at all?

A. No, sir.

Q. Had he been talking to you, or said anything to you in the period of a week or two weeks before that? Had he talked to you about your job, or given you any instructions?

A. I wouldn't say yes or no until—unless I could remember the day that I quit.

Q. Well, from the time that you quit up until the time that you were fired, did Higday talk to you about your job?

A. No, sir.

Q. Did you notice Mr. Higday talking to Mr. Glenn on May 20th?

A. Yes, sir.

Q. Could you hear what Higday said to Glenn?

[322]

A. No, sir.

Q. What was the matter? Why couldn't you hear?

A. I haven't any right ear, and he was on my right, and there was a lot of noise.

(Testimony of Leslie Allan.)

Q. There was a lot of noise from the machinery?

A. Yes, sir.

Q. Now do you know what—did Glenn tell you what Higday said?

A. Yes, sir.

Q. What did he say?

A. He said to throw the strips in the hog and not in the conveyor.

Q. That he had told Glenn to do that?

A. That is right.

Q. Did Higday say anything to you at all?

A. Not at all.

Q. Was Glenn throwing strips in the conveyor?

A. I wouldn't say that he did, because I never saw him.

Q. Did you ever see him throw strips in the conveyor after the hog conveyor was installed?

A. Not after Higday got on him, no, and told him not to.

Q. Did you throw any strips in?

A. Yes, sir.

Q. Do you recall that on the 20th of May, that is the last day you worked, you and Glenn were discussing the [323] problem of your job?

A. Yes, sir.

Q. And what did you decide to do?

A. Well, we decided to talk to Mr. Cheney and see if we couldn't get it remedied some way, get him to see our side of the point as well as Lionel's.

Q. Were conditions any worse than they had been before that?

A. Yes, sir.

(Testimony of Leslie Allan.)

Q. In what respect was it worse on this day than it had been before?

A. Well, we had had difficulty with the carrier—I suppose that is what you would call it—had broken down and the lumber was piled up behind us, and we didn't have sufficient room to work, and constantly Herman was coming over and raising the devil with Lindsay, with Mr. Glenn, about throwing those strips in there, about him throwing them into the conveyor.

Q. You decided then to talk to Mr. Cheney?

A. Yes, sir.

Q. And did you speak to Mr. Cheney?

A. I did.

Q. What did you say to Mr. Cheney?

A. I asked him if we could have a date to talk with him.

Q. What did he tell you? [324]

A. He said that he would see Mr. Pease and see if Mr. Pease had anything on his mind for the afternoon, and if he didn't he would let us know what time he could see us.

Q. Did Cheney come down to you later and tell you that he would talk to you? — A. Yes.

Q. And did he fix a date for a meeting?

A. Yes, sir.

Q. What time did he fix?

A. Seven o'clock.

Q. Seven o'clock at night?

A. That afternoon, yes, sir.

(Testimony of Leslie Allan.)

Q. Did you keep that appointment?

A. No, sir.

Q. What happened?

A. Well, Mr. Glenn decided it wouldn't be worth while to talk to him.

Q. And did you then go—did you continue working on the rest of the day? A. Yes, sir.

Q. Did you see Mr. Cheney after work then that evening? A. Yes, sir.

Q. And what did you say to him?

A. I told him that we wouldn't see him.

Q. You told him that you weren't going to keep the [325] appointment? A. Yes.

Q. Did Mr. Pease or Mr. Cheney speak to you about your job at any time on the 20th of May?

A. No, sir.

Q. Either one of them say anything to you about throwing strips into the conveyor?

A. Not at all.

Q. Did anything unusual happen on the 20th, that is, were you told you weren't going to work thereafter, or given any indication that you were through? A. No, sir.

Q. When you talked to Mr. Cheney after work that night, did he express any criticism of your work or tell you you were fired? A. No, sir.

Q. Did you come back to go to work the next day, the 21st? A. Yes, sir.

Q. What happened when you came back?

A. We stayed there until the whistle blowed, and

(Testimony of Leslie Allan.)

when the whistle blew we started to our place, and Higday told us that Pease wanted to see us in the office.

Q. Did you go to the office?

A. Started to, and the office wasn't open. [326]

Q. What did you do then?

A. We waited outside until Pease came.

Q. And he then told you that you were fired?

A. Well, not exactly.

Q. How did he express it?

A. Well, that is rather hard to remember, but anyhow it was leading to causing the conveyor to break down. He claimed because the strips were being throwed in. That was the general argument.

Q. And do you recall the incident that Mr. Glenn testified about when the men came out and gathered around you?

A. Yes, sir.

Q. And were talking about your being fired?

A. Yes, sir.

Q. Now did you—after the men had gone back to work, did you have any discussion with Mr. Pease about your discharge and the reason for it?

A. Well, I don't believe that I mentioned anything more to Mr. Cheney or Mr. Pease than to tell him that I didn't believe we were being discharged for that purpose. It was due to Union activities. I believe that is all I said in regard to the job.

Q. Was anybody there except Pease when you made that statement?

(Testimony of Leslie Allan.)

A. There was quite a bunch there. There was four or [327] five, I'd say.

Q. Do you remember who else was there?

A. Three kids that quit was there. Three kids that quit was there.

Q. What did Pease say when you told him you thought you were fired for Union activities?

A. I don't believe he give me an answer.

Q. Now, did you receive a termination slip?

A. Yes, sir.

Q. Have you that with you? A. Yes, sir.

Q. May I see it? A. Yes, sir.

Mr. Jennings: I'll ask that this be marked Board's Exhibit 6 for identification.

(Thereupon the document above referred to was marked as Board's Exhibit No. 6 for identification.)

Q. (By Mr. Jennings) Showing you this paper which has been marked Board's Exhibit 6 for identification, is that the termination notice Mr. Pease gave you? A. Yes, sir.

Mr. Jennings: I offer that in evidence as Board's Exhibit 6.

Trial Examiner Ward: It will be received.

(The document heretofore marked Board's Exhibit No. 6 was received in evidence.) [328]

(Testimony of Leslie Allan.)

BOARD'S EXHIBIT No. 6

Deliver this copy to the worker at the
time his services are terminated

Use This Form Only for Reporting Terminations
of Service Involving Possible Disqualification

Social Security account number of worker—
441-05-7081

Name of worker—Leslie Allen

Dated of this notice—5/21/43

Last date individual worked—5/21/43

Date employer was informed of worker's termina-
tion of service if other than date entered in the
preceding item—5/21/43

Employer's name and address must be typewritten
or entered in ink

Cheney California Lumber Company

Box 143

Greenville, California

Do not ask the worker to sign this form

Instructions for the worker appear on the reverse

**Termination Notice Concerning
Possible Disqualification**

Cause of Termination of Service

Check item 1, 2, 3 or 4, or state the cause of sepa-
ration under item 5. Present full explanation under
item 6:

1 ☒ Left voluntarily

2 ☐ Discharged for misconduct connected with his
work

(Testimony of Leslie Allan.)

3 ☐ Worker not able to work

4 ☐ Worker not available for work

5 ☐ Other cause

6 ☐ Explanation

I Certify that the information given on this form is true and correct to the best of my knowledge and belief.

By KENNETH PEASE

Signature of individual completing
this notice

California Department of Employment
Affiliated with Social Security Board

Q. (By Mr. Jennings) Did you have any discussion with Mr. Pease before he gave you that termination slip? A. Not that I remember.

Q. Did you quit voluntarily, as the slip indicates?

A. Well, I'd say no.

Q. Was it your desire to quit, or were you fired?

A. I was fired.

Q. Did you come around on the following day, May the 22nd, to vote in the election?

A. Yes, sir.

Q. And did you vote in the same fashion as the other men voted? A. No, sir.

Q. What was done with your ballot?

(Testimony of Leslie Allan.)

A. It was sealed in a double envelope and laid aside for later purpose.

Q. What purpose?

A. Well, I could hardly say.

Trial Examiner Ward: It was a challenged vote, was it?

The Witness: Yes.

Q. (By Mr. Jennings) Has that ballot been counted? Has your vote been counted?

A. No, sir.

Cross Examination [329]

Q. (By Mr. Cheney) You didn't work for the Company very long, did you?

A. I'd say four or five weeks.

Q. Four or five weeks. As a matter of fact—your—the record that I have indicates that you started work on the 15th of April, is that correct?

A. Something like that.

Q. You stated that before you started to work, you talked to Mr. Pease and you informed him that you had joined the Union?

A. No, that statement is not correct. I was a member of the Union before I came to California.

Q. When did you join the Union in Greenville?

A. Along in April.

Q. The card shows you joined the Union on the 15th day of April. Is that correct?

A. Bound to be so.

Q. And you started to work on the 15th day of

(Testimony of Leslie Allan.)

April. Now, you stated that you did talk to Mr. Pease and told him that you were a Union man before you started to work? A. That is right.

Q. And Lionel did hire you, did he not?

A. That is right.

Q. Even knowing that you were a Union man?

A. That is right. [330]

Q. How long did you work before you quit?

A. I can't answer that.

Q. Well, you worked altogether about five weeks at the plant? A. Do you mean—

Q. You said you quit because they boxed in the conveyor.

A. That is right. I understand, well I'd say maybe two weeks, but I wouldn't be sure about that.

Q. And you stated, did you not, that they boxed this conveyor in so strips could not be thrown in?

A. That is right.

Q. And you objected to this and told, in your own words, Higday to go to hell?

A. That is right.

Q. If they wouldn't take that floor out, you'd quit? A. That is right.

Q. And he refused to take the floor out?

A. Sir?

Q. He refused to take the floor out at that time?

A. That is right.

Q. So you quit? A. That is right.

Q. Did you get a release? A. No, sir.

(Testimony of Leslie Allan.)

Q. And then the next day, was it, that you went back to [331] work? A. That is right.

Q. And after that, and continuing up to the time that you were discharged, there was various discussion about those strips, where they should go?

A. Not to me, no.

Q. Not to you? A. No.

Q. In other words, you felt free to throw those into the conveyor? A. That is right.

Q. But you did know that Mr. Glenn was instructed not to throw them into the conveyor?

A. That is right.

Q. But you thought you had that privilege?

A. That was the understanding when I went back to work.

Q. That you could throw them in there?

A. That is right.

Q. You understood, did you not, that it was those strips that were causing, to a great extent, the conveyor to break?

A. That was their argument.

Q. You were told that? A. Sir?

Q. You were told that that was what was causing it to [332] break down to the greatest extent?

A. That is right.

Q. You also stated that Higday, in your own words, that Higday was constantly raising hell with Glenn about the strips.

A. That is right.

(Testimony of Leslie Allan.)

Q. And yet you just continued to throw the strips down in there?

A. That is right, the ones that I couldn't get away, otherwise I would put in the conveyor.

Q. The conveyor broke several times that day, did it not?

Mr. Jennings: What day do you refer to?

Mr. Cheney: The last day of his work.

A. Well, I'll say this. It didn't break very much, very many times.

Q. But it did break?

A. I wouldn't say that it broke one time even.

Q. Mr. Glenn said it broke several times. That is why I asked you that.

A. Glenn's memory could be better than mine.

Q. Do you recall Mr. Cheney coming to you and Glenn and talking to you about the strips the last day of the work?

A. I do not.

Q. Did you see him? A. I saw him, yes.

[333]

Q. Did you see him up there on the platform behind the edger where you were standing? Did he come over to you for any reason at all?

A. Not to my recollection, no.

Q. You never saw?

A. No—oh, yes, I saw him on the platform, sure, but he didn't come up to me.

Q. Where you were working there?

A. Not to my recollection, no.

Q. Now, Lionel never told you when you went

(Testimony of Leslie Allan.)

to work that you could not join a union, did he?
As a matter of fact, you already belonged to the
Union, I guess? A. That is right.

Q. And he hired you? A. Yes.

Q. Did Lionel ever threaten to fire you because
you belonged to the Union? A. No.

Q. He never criticized you for belonging to the
Union? A. No. [334]

Q. (By Mr. Cheney) You stated that you did
go to Mr. [335] Cheney and ask to meet with him
that night after work? A. That is right.

Q. And did Mr. Cheney agree to meet you and
talk with you? A. Yes.

Q. How was his attitude then?

A. Well, he didn't—his attitude seemed as
though he didn't care a lot about talking to us be-
cause he had to go back and see Mr. Pease, see if
Mr. Pease could spare the time for him to do so.

Q. I see. But he did agree to talk with you that
evening? A. That is right.

Q. And you went to him later and you cancelled
the date? A. That is right.

Q. So he never did talk with you? A. No.

Q. Did Lionel ever tell you—did Mr. Pease ever
tell you that it was against the Company policy to
belong to the Union? A. He did not.

Q. Did he ever mention the Company's name in
regard to the Union? A. Not to me, no.

Q. Did Lionel tell you that he fired you for
Union activity? [336] A. He did not.

(Testimony of Leslie Allan.)

Q. He told you, did he not, that he fired you because of the strips in the conveyor?

A. He could have made that remark, but I can't recall hearing it.

Q. But did you not say that the remark he made, the reason given for firing you, had to do with the strips in the conveyor?

A. Well, I make this statement again—that I don't remember him ever saying that I was fired.

Q. He didn't tell you that you were fired?

A. That is right.

Q. Who fired you?

A. Mr. Cheney is the only man that I heard make the remark that we were fired, and he didn't say that we were fired. He says, "We can't use you any longer," and he was talking towards Mr. Glenn when he made that remark.

Trial Examiner Ward: Was that on the 21st?

The Witness: The 21st of May, yes.

Q. (By Mr. Cheney) But you understood that it had something to do with the strips and the conveyors?

A. That was his argument.

Q. During the time you worked there and belonged to the Union, you were given the privilege of overtime at the mill, according to the record? Do you feel that you were [337] discriminated against in any other way, in any way by the Company or by Mr. Pease while you were working there?

A. Well, not up until the date of our release.

Q. Well, you mean you were discharged? But

(Testimony of Leslie Allan.)

while you were working there, you were not discriminated against. You were given overtime and any other privileges that any other man had there?

A. I wouldn't say that I was, no.

Q. You wouldn't say that you were discriminated against?

A. That is right.

Redirect Examination

Q. (By Mr. Jennings) Before you came out here from Oklahoma to work for the Cheney California Lumber Company, Mr. Allan, had you a promise of a job out here?

A. Yes, sir.

Q. And before you wrote out here and got the promise of the job, did you let the Company know that you were a member of the Union? When you wrote out here, did you say that you were a Union member?

A. No, sir, they never knew it.

Q. Not until you got out here and talked to Mr. Pease?

A. That is right. [338]

HAROLD HALL WILLIAMS,

a witness called by and on behalf of the National Labor Relations Board.

Direct Examination

Q. (By Mr. Jennings) What is your full name, please?

A. Harold Hall Williams.

Q. What is your business?

(Testimony of Harold Hall Williams.)

A. International Representative of the United Brotherhood of Carpenters and Joiners of America, American Federation of Labor.

Q. How long have you held that job?

A. Approximately two years.

Q. What territory do you cover?

A. California, Nevada, and portions of Oregon.

Q. Do you recall on May the 19th, 1943, that you were up in Greenville in connection with a consent election at the Cheney Lumber Company?

A. I do.

Q. And did you go out to the mill at that time?

[339]

A. I did.

Q. And converse with representatives of the Company and representatives of the National Labor Relations Board?

A. I did.

Q. That was Miss McElroy, and I think Mr. Pease represented the Company?

A. I couldn't identify Mr. Pease. I remember Mr. Cheney being in the office for a time, and some other gentleman.

Q. And an agreement for a consent election was entered into at that time?

A. That is correct.

Q. Now, do you recall a discussion as to the date of the election?

A. Not very clearly.

Q. Was there any problem as to the date of the election?

A. Yes, Miss McElroy had it in her mind to set the election off to a date more distant than we be-

(Testimony of Harold Hall Williams.)

lieved necessary, and I remonstrated with her about that, tried to get a sooner election.

Q. Did you succeed in changing the date?

A. Yes, eventually.

Q. Now can you tell me just how this change in the date transpired, what happened?

A. We were a little bit fearful of a strike amongst the employees if the date was put off too far, when they felt [340] that they were entitled to their representation, their rights of bargaining. On leaving the Company's office, quite a number of the employees, I believe practically all of them that were at work that day, or down around the plant, were grouped at a ramp leading down from the sawmill to the ground.

Q. The date for the election had been determined at that time?

A. Not at that time, not definitely, although it seemed it was to be about ten days or so before the election would be held.

Q. Yes?

A. I walked over to the group and, as I recall, Miss McElroy also walked over with me and talked to them for a few minutes, and asked the boys to stay on the job and keep the thing going until such time as we could have an election. They were quite firm in their position that they wanted an election very soon. Miss McElroy asked a couple of questions, and then she left and walked over to her car. As I recall, I stayed and talked with the boys for

(Testimony of Harold Hall Williams.)

a few minutes longer, and then one of the boys, I believe Mr. Allan, walked over to——

Q. The man sitting here, Leslie Allan?

A. I believe so—walked over to Miss McElroy's car and talked with her for a few minutes. What they talked about, [341] I don't know.

Q. Was anybody else standing there with Mr. Allan when he was talking to Miss McElroy?

A. I don't recall. I just remember him leaving and going over to talk to her.

Q. Yes.

A. I stayed and talked with the boys just a few minutes longer down there, and when he finished his conversation, then I walked over to her car, and we left and came into town. She told me she would attempt then to make the election sooner, I believe, on the 22nd.

Q. During the period of time that you were standing there, did you observe any representative of the Company in the vicinity of these three men?

A. One that was pointed out to me as a representative of the Company.

Q. How did that transpire?

A. While I was talking to the boys, we had been grouped quite closely, and one of the boys standing next to me spoke to me in a low voice and said, "There is one of the bosses over there watching us." I turned around and there was a man standing—oh, probably fifty feet from us, watching us.

Q. Who was he watching?

(Testimony of Harold Hall Williams.)

A. Watching, I imagine, both groups. He was in sight [342] of both groups, both Miss McElroy, and Mr. Allan, and myself and the other men. At the time I turned around, he was looking at our group. [343]

ROBERT EARL PETTIE [350]

a witness called by and on behalf of the Respondent.

Direct Examination

Q. (By Mr. Cheney) And where are you employed?

A. Cheney California Lumber Company.

Q. When did you first go to work for the Cheney California Lumber Company?

A. February 18th, '42.

Q. And you worked steady for the Cheney California Lumber Company since that date?

A. That is right.

Q. What is your position?

A. Planerman.

Q. Would you tell us where the planer is situated in the mill in regard to the position of the edger?

A. Well——

Q. How many feet away?

A. Well, do you mean——

Q. From the edger.

A. Do you mean is it sideways or straight ahead? [351]

(Testimony of Robert Earl Pettie.)

Q. Well, sideways. The closest position, how many feet is it away?

A. Approximately fifteen feet.

Q. Do you spend most of your time around the planer?

A. That is right.

Q. Is it your job to see that the material goes through the planer right?

A. Yes, it is.

Q. That it enters the planer and then is planed and the planer is running in a satisfactory condition, is that it?

A. Yes.

Q. Do you know Mr. Glenn and Mr. Allan?

A. Yes, I know them. That is, I met them on the job and worked with the men.

Q. Where were they working on or about the 21st day of April, 1943?

A. Well, I believe they was working behind the edger.

Q. And meaning behind the edger, they were the strip catchers?

A. Yes, that is right.

Q. While they were working behind the edger, and during that period of time, did the conveyor chain break, the large conveyor under the edges, refuse conveyor, did that ever break?

A. Well, they was working behind the edger.

[352]

Q. Yes.

A. Yes, it did.

Q. And were you in a position to know what was causing that chain to break?

A. Well, yes, I guess I was. Herman Higday was the foreman at that time. He told the two men

(Testimony of Robert Earl Pettie.)

not to throw edgings into the conveyor. He also came over and told me not to throw them in.

Q. And were edgings or strips thrown in the conveyor after the men were warned not to do it?

A. Well, as far as that goes, I couldn't say. The man that was working out on the end of the conveyor could probably tell you that.

Q. What do you mean, out on the end of the conveyor?

A. Well, when I first went to work down there, I went in behind the edger and worked there. I worked with Mr. Glenn, and at that time we were allowed to throw the edgings in the conveyor. Mr. LaFluer was coming down to overhaul the planer or set in this other planer, and Mr. Allan was hired then, and he was working then with Glenn, and I went over behind the planer to take care of that part of it there while waiting for Mr. LaFluer to arrive.

Q. You speak of the man being out there on the end of the conveyor? Did they put him out there on the end of the conveyor when they were allowed to throw strips into the [353] conveyor?

A. Yes, that is right.

Q. What was his purpose out there at the end of the conveyor?

A. Well, these edgings would go down this one conveyor, and while waiting, it was higher—this one conveyor is higher than the big conveyor that runs down to the burner, and these edgings would fall

(Testimony of Robert Earl Pettie.)

over the end of this one, this conveyor, and lie there until the bucket would come from the conveyor, run out to the burner and carry it out, and if there wasn't a man there to throw them down, a bucket could come down on this conveyor underneath the planer that runs through there and hang up onto it and break the chain.

Q. Now, it was the practice of the mill, was it, that when the men behind the edger were allowed to throw those into the conveyor, to also have a man out there to watch these strips?

A. That is right.

Q. After the hog was installed, while the hog was in operation, or when the men were told not to do it, not to throw those strips in there, then did the Company keep a man out there on the end?

A. No, there was no man there. The men behind the edger were not supposed to throw them in.

Q. And then the strips then being thrown in when there [354] wasn't anybody out there, tended to break the chain?

A. That is right. That is what they said would break the conveyor chain.

Q. Mr. Pettie, did you belong to the Union when you came to work for the Cheney California Lumber Company?

A. That is right. I belonged to one in Washington.

Q. I see. And you belonged to the Union when you came to work there? A. Yes.

(Testimony of Robert Earl Pettie.)

Q. Did you display a Union button?

A. That is right, I wore one right on the job down there.

Q. Did anyone ever criticize you for the wearing of that button?

A. No, there was no one that criticized it, but there was one man, he was a sawyer, he sawed there at the *same* Mr. Howell did. I can't think of his name. Maybe someone in the courtroom could remind me of his name. Anyway, he asked me if that was a Union button, and looked at it, and he discussed the Union with me, and it was the only time—he was the only man.

Q. You were never told to take the button off?

A. No, sir.

Q. And were you ever told by Mr. Cheney or the Company that you would have to drop your affiliation with the Union, or that you couldn't join the Union? [355]

A. No, sir.

Mr. Cheney: I believe that is all.

Cross Examination

Q. (By Mr. Jennings) What is your job at the present time, Mr. Pettie?

A. Planerman.

Q. Working as planerman all the time?

A. Yes, that is, I carry out a few orders for Mr. LaFluer.

Q. You carry orders out to the men?

A. What do you mean by that?

Q. Well, do you take orders from Mr. LaFluer and bring them out to the men?

A. Yes.

(Testimony of Robert Earl Pettie.)

Q. And tell them what to do? A. Yes.

Q. Are you given any title, any consideration in addition to that that the other men out there have? That is, are you considered as a working foreman?

A. Working foreman?

Q. Yes.

A. Well, yes, I have work to do there.

Q. But you also do some supervisory work?

A. Well, by that, if a new man comes and Mr. LaFluer tells me the job he's supposed to go on, I show the man [356] his job. I have no right to hire or fire anyone.

Q. You just tell them how to do their work?

A. Show them the job and tell them, that is all.

Q. What Union did you belong to when you came down here? A. A.F.L.

Q. Did you sign a card in the A.F.L. Union at Greenville? A. I signed the Union card.

Q. Down here at Greenville? A. Yes.

Q. Do you still belong to the Union?

A. No, I don't. I got a withdrawal card from the Union.

Q. What happened when the hog conveyor was down after it was installed? What was done with the edging?

A. Will you repeat that please?

Q. What happened—what did you do with the edging when the hog conveyor was down, wasn't operating?

A. When the hog conveyor wasn't operating?

(Testimony of Robert Earl Pettie.)

Q. Yes.

A. They were then allowed to be thrown into the other conveyor. A man was placed at the end each time to watch them.

Q. Was that true in 1943?

A. That is when I believe it was, yes.

Q. I mean this year, within the last few months since Glenn and Allan were fired? [357]

A. Well, no, then they were throwed on the floor, piled up, if that is what you mean.

Q. Since Glenn and Allan were fired, has the hog conveyor been broken down sometimes so that it couldn't be used?

A. The hog conveyor?

Q. Yes. A. Yes.

Q. And what was done with the edgings when the hog conveyor was down, or do you know?

A. Oh, this here chain now, they have been throwed in and going right out to the burner.

Q. And there has been no man there watching it?

A. Not on this chain, no. It's a different chain, a different pipe chain.

Mr. Jennings: That is all.

Redirect Examination

Q. (By Mr. Cheney) I might bring that point out. Would you explain to the Court what you mean by different pipe chain, or I might put it this way: Was the old chain removed from the building and a new chain put in?

(Testimony of Robert Earl Pettie.)

A. Yes, it was. This new chain is a regular sawdust chain. Each length is a bucket. It has no bucket. By bucket, I mean a raised piece of iron on top of the chain. The chain is perfectly smooth. The sawdust falls between the lengths and rides out out that way. [358]

Q. It's safe then to put the edgings, or strips, as they call them here, into that conveyor now?

A. Into this conveyor, this type chain, yes.

Q. Without the danger of breaking it?

A. Yes.

Mr. Cheney: That is all.

Recross Examination

Q. (By Mr. Jennings) Do you remember about how long after Glenn and Allan were fired, that the new chain was put in? They were fired on May the 21st.

A. No, I don't remember when that new chain was put in.

Trial Examiner Ward: Does the Company have any record on that?

Mr. B. B. Cheney: A little over a month later, last June, we came down here on June 13th and were down here about ten days installing the new chain after Mr. La Fluer came.

Trial Examiner Ward: The record will show that the record was made by the President of the respondent Company.

STANLEY A. MANNING,

a witness called by and on behalf of the Respondent.

[359]

Direct Examination

Q. What is your position in the Cheney California Lumber Company? A. I'm a sawyer.

Q. You're a sawyer? A. Yes.

Q. Now, you're sawing on which of the three rigs?

A. I'm sawing on the mill closest to the edger.

Q. The ~~one closest to the edger?~~ A. Yes.

Q. What is that called?

A. Number One mill.

Q. Number One mill? A. Yes.

Q. Is your mill situated over the top of this refuse conveyor that is in question?

A. It runs right square under the saw. [360]

Q. The sawdust from your head saw is taken out to the burner by this same refuse conveyor?

A. Yes.

Q. Would you say whether or not the conveyor is open right directly under your saw?

A. It's open under the whole mill part.

Q. Under the whole mill part? A. Yes.

Q. Were you working at the Cheney California Lumber Company on or about the 21st day of April, 1943? A. Yes.

Q. Was that the time—

Trial Examiner Ward: Off the record.

(Discussion off the record.)

Trial Examiner Ward: On the record.

(Testimony of Stanley A. Manning.)

Q. (By Mr. Cheney) This is in May?

A. Yes, I started to work there in April, about the middle of April, and worked clear on to now. I'm still working there.

Mr. Jennings: In order to clarify the record, I think there was some question about whether Mr. Pettie was working there.

Mr. Cheney: Mr. Pettie was working—our records, time records show that Mr. Pettie was working.

Mr. Jennings: I'll stipulate with you that he was [361] working on May 21st and May 22nd, because he voted in the election.

Trial Examiner Ward: And the testimony he gave for April 21st was intended for May 21st.

Mr. Cheney: Yes, so stipulated.

Q. (By Mr. Cheney) Were Mr. Allan and Mr. Glenn working behind the edger at that time?

A. Yes.

Q. Can you state as to what experience you had with the edgings, or "strips" as they're called, that were put in the conveyor and travelled through the conveyor?

A. Yes, the edge of the feed rack of my mill runs the carriage back and forth. It was right over the conveyor and these edgings, long edgings come in there, and they come right up through the feed rack on my mill, and I'd hold onto the lever until somebody would chop them out or pull them out, or stop the chain and get rid of them, because

(Testimony of Stanley A. Manning.)

that would make my carriage run away, which did happen afterwards, and I knew that Glenn and his partner had orders not to throw them in there at that time, and that day I walked around there, and Mr. Glenn was right in the act of throwing an edging in the conveyor at that time, and I asked him if he thought that was the right thing to do, when he had orders not to do it, and he just practically the same as told me that I wasn't making out his check, not in so many [362] words, but he meant the same thing, and the edgings in the feed rack happened a good many times. It wasn't only once. It was a good many times. And finally one got in there crossways and tore the whole mill to pieces, took days to fix it up. If I'd have been leaning over that thing, it would have taken me right into the saw.

Q. That was very dangerous, was it?

A. Very dangerous to work there, yes. In fact, I asked for a resignation there one day. [363]

Redirect Examination

Q. (By Mr. Cheney) You said that your carriage—that those strips caught in it, in the feed board of your carriage at some time, some three weeks after these men were discharged?

A. Somewheres around that.

Q. Did they ever catch in your feed rack while these men were working in those places?

A. Yes. That is why I went and told them about

(Testimony of Stanley A. Manning.)

throwing them in. On several occasions they'd get in there and we'd have to take an ax, I'd stand there and hold the handle so the carriage would stay still and my helper would take an ax and chop them in two.

JESSE W. La FLUER

a witness called by and on behalf of the Respondent.

Direct Examination [370]

Q. And when did you first start employment with the Cheney California Lumber Company?

A. The first work I did here was about the 4th of April.

Q. About the 4th of April, 1943?

A. 1943, yes.

Q. What was the work that you did at that time?

A. I came down to overhaul their planers. They were having trouble with it, and when I got here, why, I found that I had to send and get another machine so I was here practically a whole month.

Q. The month of April?

A. The month of April, yes.

Q. Yes.

A. So I had to wait until the new machine came and put that in. So I worked about all the month of April at that time.

Q. Did you have anything to do with installing the hog?

(Testimony of Jesse W. La Fluer.)

A. Yes, sir. I installed the hog during that same amount of time.

Q. During the same month?

A. Yes, sir.

Q. April of 1943?

A. April, 1943; yes, sir. [371]

Q. Were you at the mill at the same time that Mr. Allan and Mr. Glenn were working behind the edger?

A. Yes, sir.

Q. Was the mill in operation?

A. Yes.

Q. At that time?

A. Yes, sir; at that time.

Q. You made the statement that you had—you were in charge of installing the hog, and did you put the hog in operation?

A. Yes, sir.

Q. While these two men were working behind the edger?

A. Yes, sir.

Q. Did Mr. Allan or Mr. Glenn, were they instructed at that time as to where they should put the edgings or strips?

A. Well, I know they were instructed not to put them into the conveyor.

Q. What were they doing—what were they supposed to do with them at that time?

A. Well, when I got the hog ready to run I was very anxious to get them all through there because I wanted to see if it would handle the work.

Q. Yes.

A. And I was very anxious that they would go

(Testimony of Jesse W. La Fluer.)

through and that is where they were supposed to put them. [372]

Q. Did they put them in there?

A. No, not all of them.

Q. Where did they put those that didn't go in there?

A. Well, they put most of them into the conveyor, the refuse conveyor running through the mill.

Q. The hog was in condition to run at that time?

A. Absolutely.

Q. And running? A. Absolutely.

Q. Can you state whether or not the placing of those strips in the conveyor caused the conveyor to break?

A. I surely would say that is what caused it to break; from past experience I know it would.

Q. And to the best of your knowledge at that time they were instructed to put them into the hog and not in the conveyor? A. Yes, sir.

Q. And you saw them, did you, with your own eyes put them in the conveyor?

A. Yes, sir; I stood right up over the trim saws and watched it go on.

Q. What is your position now with the Cheney California Lumber Company? A. Manager.

Q. You are the manager?

A. General manager of the Cheney California Lumber Company. [373]

Q. When did you become manager?

A. It would—I took the job over about the 14th

(Testimony of Jesse W. La Fluer.)

or 15th of June, 1943. If I recall I left at—we left Washington about the 9th of June. [374]

Q. (By Mr. Cheney) What position did you have with the Cheney California Lumber Company during the month of April when you were here installing the planer and hog?

A. Well, so to speak the language, I'll say I was a trouble shooter.

Q. A trouble shooter? A. Yes.

Q. For the machinery?

A. For the machinery. I came down here because they were having trouble and I was sent down here to install that planer or whatever should be done to put it right.

Q. Yes. And did you have any right to hire men? A. No, sir.

Q. Any right to fire men? A. No, sir.

Trial Examiner Ward: Or to supervise them?

The Witness: Beg pardon?

Trial Examiner Ward: You could supervise men working with you?

The Witness: Just the men that I asked for to be working with me?

Trial Examiner Ward: What title did you have before you came down here?

The Witness: Before I came down here?

Trial Examiner Ward: Yes. [375]

The Witness: I was working for the Cheney Lumber Company in Washington, going from one

(Testimony of Jesse W. La Fluer.)

mill to another and repairing and doing necessary repair work.

Trial Examiner Ward: Sort of a master mechanic?

The Witness: Yes, sir.

Trial Examiner Ward: That satisfies the Examiner.

Q. (By Mr. Cheney) Your position, as I understand it now, is the position of manager?

A. Yes, sir.

Q. For the Cheney California Lumber Company?

A. Yes, sir.

Q. You have the right to fire men?

A. Yes, sir.

Q. And you show them, do you, as to what work, place them about the mill and direct their activities?

A. Yes, sir; that is part of my business.

Q. I want you to tell the Examiner, Mr. La Fluer, whether or not you ever—had ever been discriminated against or had ever discriminated between Union and non-Union men in the type of work and the placement of them in the mill and the number of hours they are allowed to work and so forth?

A. No, sir; I have not.

Q. Have you ever told any of the men, or made any remarks to the men about Union activities?

A. Concerning unions, no, sir; other than the men have [376] talked to me. Some of them had talked to me and I said it was immaterial to me what union they had. The only thing I wanted was to

(Testimony of Jesse W. La Fluer.)

Q. Have the one that they wanted. That is the only thing I ever said about the union to any of the men.

Q. Mr. La Fluer, have you had any experience in the past in handling large numbers of men and boys? A. Since 1913, about 31 years.

Q. You have *have* handled men during that length of time?

A. Yes, sir. Anywhere from 10 men to 250.

Q. Yes. And would you say that the men employed by Cheney California Lumber Company now are the average type of lumber workers?

A. Yes, sir, I would. I think a lot of every man I got there. [377]

WILLIAM H. HAWSON,

a witness called by and on behalf of the Respondent.

Direct Examination

Q. And how long have you been employed by the Cheney California Lumber Company?

A. Well, I have been there ever since the mill started in May of 1941.

Q. Are you the oldest employee there?

A. I am.

Q. What is your position at the present time?

A. Filer.

Q. Filer? [380] A. Yes, sir.

Q. What was your position—during May of 1943, this year, what was your position?

(Testimony of William H. Hawson.)

A. 1943, I was grader.

Q. Would you explain grading; what did you grade?

A. Two by fours, eight feet.

Q. How far were you, in grading the two-by-fours, how far did you stand from this refuse conveyor?

A. Well, I stood right with my back to it.

Q. And how far would that be?

A. That would be about 20 feet or 25 feet, that is, from the back end.

Q. Were you aware of the conveyor trouble that was going on at that time?

A. I was.

Q. Did you at any time see strips or edgings caught in the conveyor or during that time?

A. Well, I didn't particularly see them. I seen when they'd catch on the back end and hang the conveyor up; I'd see them, pry them out of the back end of the conveyor.

Q. That is what I mean. You saw edgings in the conveyor?

A. Yes.

Q. And how did these affect the conveyor, Mr. Hawson?

A. Well, they'd go down over and then they'd come back on the return chain and hang up on the back end and catch the [381] bucket and broke the conveyor; liable to break anywhere.

Q. It has been testified here that when the men were instructed to place those edgings into the conveyor, edgings or strips, as they are called here, in the conveyor that a man was placed at the far end

(Testimony of William H. Hawson.)

of the conveyor to prevent them from tangling up with the conveyor. Now, at the times that a man was placed out there did you at that time ever see any edgings come back through?

A. Well, I couldn't say as to that because I didn't know for sure whether there was a man out there or not, all the time, or just part of the time because I would be two or three hundred feet from where I worked.

Q. Could you say whether or not the edgings or strips had any effect on breaking the conveyor?

A. It did have, yes.

Q. Did you ever help repair this conveyor?

A. Yes, several times.

Q. Did you ever find edgings or strips that were caught in it when you repaired it?

A. There was edgings come back through on the back end and they'd catch the bucket as they come back and hang the back end and break the conveyor.

Q. Were Mr. Allan or Mr. Glenn working behind the edger at that time? A. They were. [382]

Q. Did you state whether or not Mr. Allan and Mr. Glenn had been instructed not to throw strips into this large conveyor?

A. Well, I could not; because I didn't overhear any of the foremen tell them not to.

Q. What was the understanding there as to where the strips were to be placed?

A. They were supposed to be thrown into the hog conveyor as long as the hog conveyor was in work-

(Testimony of William H. Hawson.)

ing order. What I mean, they were supposed to be put in the hog conveyor that goes upstairs.

Q. If they weren't thrown into the hog conveyor, or when the hog conveyor was down, then where were they supposed to be put?

A. In the other conveyor, or thrown off to the side.

Q. When they were placed in the other conveyor was there a man usually—was there a man placed out on the end to keep them straight then?

A. I think there was, but I wouldn't say for sure.

Q. Did you at any time see Glenn or Allan throw strips into the conveyor?

A. I saw them throw them in there but I didn't know whether they were instructed to or not.

Q. In other words, your job as I understand it, was a grader? [383]

A. Yes. My job was a grader.

Q. And you had nothing to do with that part of it?

A. I had nothing to do with that part of it, no.

Q. How long have you known Mr. Ben Cheney, Mr. Hawson?

A. Well, I should say about 15 or 16 years, maybe longer.

Q. What has been your relationship with Mr. Cheney in regard to the handling of men?

A. Handling of men—excuse me. What was that question again?

(Testimony of William H. Hawson.)

Q. Of handling and dealing with men?

A. I have found him O.K. in every way.

Q. Has he been fair in his judgment and in his handling of men?

A. Yes, sir.

Q. Has Mr. Cheney ever approached you, or made any remarks to you of any kind whatsoever regarding union affiliations?

A. No, sir.

Q. Have you ever belonged to a union?

A. Not for several years.

Q. You didn't sign the union card down here?

A. Which one do you mean?

Q. That is, did you sign the union card—have you signed a union card while working for the Cheney California Lumber Company? [384]

A. Not outside of they circulated one union card there and I signed that.

Q. You signed a union card?

A. Yes.

Q. But do you belong to the union now?

A. No.

Mr. Cheney: I believe that is all.

Cross Examination

Q. (By Mr. Jennings) When did you sign a union card, Mr. Hawson?

A. Well, it must have been in June.

Q. What union?

A. CIO.

Q. Or you didn't sign with the AFL?

A. No.

Q. Then at the time of the election you were not affiliated with any union?

A. No.

IVAN L. WILSON, [385]

a witness called by and on behalf of the Respondent.

Direct Examination

Q. Were you working for the Cheney California Lumber Company during April and May of this year? A. Yes, sir.

Q. When were you first employed by the Cheney California Lumber Company?

A. April 29, 1942.

Q. 1942? A. Yes, sir.

Q. And you worked continuously for them since that date?

A. Except for the lay-off in the winter.

Q. Except for the winter lay-off?

A. Yes.

Q. What is your position with the Cheney California Lumber Company? [386] A. Sawyer.

Q. And you are sawing in which mill?

A. No. 1.

Q. That is the large mill?

A. That is right.

Q. You heard Mr. Manning's testimony that he was sawing in No. 1 mill, but that is counting from the other end; I guess, isn't it?

A. That is right. His mill is No. 3.

Q. Is it customary that the large mill be called No. 1 and the next largest No. 2 and the smallest No. 3? A. Yes.

Q. And then Mr. Manning would be sawing in No. 3 mill according to the way you count?

(Testimony of Ivan L. Wilson.)

A. Yes, sir.

Q. Would you describe the relation of your mill to the conveyor, that is, are you on the farthest end, you might say, of the conveyor?

A. That is right.

Q. Did this conveyor break down at any time during the time that you were sawing there in April and May?

A. Yes, sir.

Q. Did you ever have occasion to inspect the conveyor or help fix it when it was broken?

A. Well, I helped fix it every time it was broken.

[387]

Q. Would you state what was the cause of this conveyor breaking?

A. No, I don't know for sure.

Q. Did you ever find edgings or strips caught in it when it was broken?

A. Well, I wouldn't say for sure, no.

Q. But you know that it was broken at times?

A. All I know is—is that it was broken; yes.

Q. Have you ever worked with Mr. Glenn around the mill?

A. I think he turned down for me at one time.

Q. Could you state whethar or not his work was of a satisfactory nature to you as a sawyer?

A. Well, that sort of job, he was pretty light for it.

Q. He didn't handle the job correctly, is that it?

A. Well, no; not as good as a heavier man would.

(Testimony of Ivan L. Wilson.)

Q. Did you sign the union card at the mill?

A. Yes, sir.

Q. Are you a member of the union now?

A. No, sir.

Q. What card did you sign? A. CIO.

Q. CIO? A. Yes.

Q. When did you sign that card?

A. I don't remember just when it was. [388]

Q. I mean, was it this year?

Trial Examiner Ward: What is the materiality of that?

Mr. Jennings: It was after the election, wasn't it?

The Witness: That is right.

Q. (By Mr. Cheney) Did you ever sign an AFL card? A. Yes, sir.

Q. And when did you sign that card?

A. I don't recall.

Q. This year?

A. That was before the election?

Q. Before the election. A. Yes.

Q. Was it known to the management of the Cheney California Lumber Company that you were a union man? A. I'm not a union man.

Q. That you were at that time when you signed the card?

A. Well, it was just—it wasn't joining the union, it was an application card, I guess that is what it would be. But the company knew about it, yes.

Q. As a sawyer in the mill and as a workman

(Testimony of Ivan L. Wilson.)

there did you ever notice any change in attitude in the company towards you? A. No, sir.

Q. Did Mr. Pease ever tell you that you could not join a union? [389] A. He never did.

Q. Did Mr. Ben Cheney ever tell you that you could not join a union? A. No, sir.

Q. Your relationship was the same whether you had signed a card or whether you had not; is that right? A. That is right.

Mr. Cheney: I believe that is all.

Cross Examination

Q. (By Mr. Jennings) You said that the company knew that you signed up with the union?

A. That is right.

Q. How did the company find that out?

A. I told them.

Q. Whom did you tell?

A. Mr. Lionel Pease.

Q. What did he say? A. Nothing.

Q. Didn't he say something to you about it?

A. No, he didn't say anything. [390]

ERNEST J. DAVIS

a witness called by and on behalf of the Respondent.

Direct Examination

Q. (By Mr. Cheney) Where are you employed, Mr. Davis?

A. Cheney California Lumber Company.

(Testimony of Ernest J. Davis.)

Q. What is your position?

A. Tail edger.

Q. What?

A. Tail edger, catching the strips. [392]

Q. Are you the stripperman that is there at the present time? A. Yes.

Q. How much do you weigh? A. 120.

Q. 120 pounds? A. Yes.

Q. Did you handle the same job that the gentlemen Mr. Allan and Mr. Glenn had?

A. Yes, sir.

Q. How long have you been working at that job?

A. Well, I was hired there June 1942.

Q. What did you do at that time?

A. I was there behind the edger; working there. [393]

Q. Handling strips?

A. No, I was sorting two by fours.

Q. In other words, the same job that Mr. Allan had? A. Yes.

Q. The big fellow sitting over there?

A. Yes, sir.

Q. Were you able to handle that job satisfactorily to your knowledge?

A. Yes. They didn't have any complaints.

Q. How long did you work at that job in 1942?

A. About a week.

Q. Then what did you do?

A. They put me out on the chain.

Q. On the green chain? A. Yes.

(Testimony of Ernest J. Davis.)

Q. And what were your duties on the green chain? A. Pulling two by fours.

Q. How long did you work during 1942 for the company? A. All summer.

Q. All summer?

A. Yes, until school started in August. The last part of August.

Q. Then when did you go to work for the Cheney Lumber Company in 1943?

A. About the last part of May. [394]

Q. What was your job when you went to work, what job were you put on?

A. Catching these strips.

Q. And have you been catching the strips since?

A. Well, most of the time. Couple of days I pulled ties.

Q. You worked out on the green chain pulling ties for a couple of days? A. Yes.

Q. What job would you say is the most difficult, the job catching those strips or pulling ties?

A. Catching the strips you have got to work steadier.

Q. Have you worked in any other jobs around the Cheney California Lumber Company or any other lumber company different from those that you have handled there?

A. Yes, two by four chain about a week.

Q. I mean in any other mill?

A. I worked at Setzer's.

Q. What did you do at Setzer's?

(Testimony of Ernest J. Davis.)

A. Box factory.

Q. ' I see. From your observation of jobs, in your experience of different jobs, would you consider that job of catching strips the most difficult job in the plant? A. In the plant down there now?

Q. Yes.

A. Well, it isn't as difficult as some of them, [395] but it's sort of tough at times when the lumber gets piled up and you've got to rush them through.

Q. Are you able to—do you find time to place the strips in the hog conveyor or behind on the floor? A. I got to.

Q. Is it ever necessary for you to have to throw them into the conveyor, that is, are you ever rushed to a point where you have to throw them into the conveyor? A. No.

Q. Is it true that there is a bell connection with a button on your end of the edger, and with a gong on the edgerman's side? A. Yes, sir.

Q. What is the purpose of that bell?

A. When the lumber gets piled up there the planer stops, the edgerman doesn't see it, we have to have him stop so it won't pile up.

Q. Was that bell installed there when you started to work this year? A. Yes, sir.

Q. Could you say how long that bell has been installed?

A. It's been there all the time that I have this summer.

(Testimony of Ernest J. Davis.)

Q. And do you know of your own knowledge when the bell was first installed?

A. No, I don't. [396]

Q. Mr. Davis, did you sign a union card?

A. No, I didn't.

Q. You weren't there during the election, I guess; were you? A. No.

Mr. Cheney: That is all.

Cross Examination

Q. (By Mr. Jennings) Do strips ever fall from the belt on to the conveyor?

A. Small ones, not the tall lengths.

Q. But the small strips do fall through?

A. Yes, the ones that break up.

Q. Have you any way of stopping those, or do you try to stop them?

A. I stop some of them but not all of them. I can't.

ALVIN WAITTS

a witness called by and on behalf of the Respondent.

Direct Examination [397]

Q. (By Mr. Cheney) You are employed by the Cheney California Lumber Company, are you not?

A. Yes, sir.

Q. And you're the edgerman at the mill?

A. That is right.

Q. And would you state whether or not—or

(Testimony of Alvin Waitts.)

would you state approximately when the bell was installed?

A. Some time this spring. I don't know the date.

Mr. Cheney: It is stipulated that the bell was installed after the discharge of Mr. Glenn and Mr. Allan.

Q. (By Mr. Cheney) Mr. Waitts, did you ever have any conversations with Mr. Ben Cheney regarding the edgings in the big conveyor?

A. Whether to throw them in, or whether not to; you mean?

Q. Yes. [398]

A. He told me a number of times that when he was down that he didn't want them thrown in there.

Q. Did he give you the reason why he didn't want them thrown in?

A. Well, he said it caused the trouble with the chain. [399]

B. B. CHENEY

a witness called by and on behalf of the Respondent. [400]

Direct Examination

Q. (By Mr. Cheney) I believe for the purpose of the record, Mr. Cheney, you testified yesterday that you were President of the Cheney California Lumber Company? A. That is right.

Q. And your residence?

(Testimony of B. B. Cheney.)

A. Tacoma, Washington.

Q. Mr. Cheney, do you find it necessary to make periodic trips to Greenville?

A. Yes. I have made trips regularly right along.

Q. How often are you in Greenville?

A. Well, I have come here at least once a month for nearly a year.

Q. And how long do you stay at each trip?

A. Well, I stay from periods ranging from a few days and as high as ten days or two weeks.

Q. Are you familiar with the operations—the mechanical of the mill here at Greenville?

A. Yes, in a general way I am.

Q. Are you acquainted with all the employees at the mill?

A. I think I know pretty nearly every man at the mill.

Q. Have you always made it a point to become acquainted with any new employee that comes into the mill? [401]

A. That has always been our policy in our companies, not only this company in which I'm interested, but also other companies. It's our business to do that. We've got to have employees just like we have to have these men. They are just part of the business; and especially today where we have to get out pressing contracts, more than ever we have to work just as closely as possible to get orders out and it's only the intention of myself and the company to work very closely with the men that are

(Testimony of B. B. Cheney.)

working for us and get their cooperation. We need every man. There is a manpower shortage and we need each man that is on the job and therefore I have always tried to work closely with all of our men.

Q. Now, Mr. Cheney, have you ever been engaged in labor litigation of this type before?

A. Never have had any trouble like this.

Q. Are any mills that are operated by you union?

A. Yes.

Q. Have you ever had any trouble with them?

A. None whatsoever. It doesn't make any difference to the company. We want the men to have their choice. That has always been my policy.

Q. Mr. Cheney, you were in Greenville, were you on the—were you here on the day of the election?

A. Yes, I was here.

Q. Were you here the day that the election was set, which I [402] believe was the 19th?

A. No, I was not.

Q. Did Mr. Williams of the AFL who testified he talked to you on the day that the election was set, which I believe was the 19th,—have you ever met this gentleman?

A. I never have seen Mr. Williams in my life before until today.

Q. Since this trouble started, since this case was started, have you ever made any offer of settlement?

A. Yes, I tried very hard to work it out because if I may, as a background, why, more than ever I

(Testimony of B. B. Cheney.)

wanted to work it out—we have some very important contracts. All of these men were engaged in some very important war work. We have contracts—our various companies have contracts. We supplied ties first for the Burma Road. We supplied the railroad ties for Iran and Iraq, that is, the Caucasus, where you're all reading about where the allied drive may go through. The War Department called me from New York the day after the invasion of Africa and wanted a hundred cars of ties rushed to the East Coast, and they said "You might know where it's going", indicating that it was Africa. At the present time we are cutting on large contracts for Alaska and then we have the contract with most all the transcontinental railroads in this country, and consequently this is very, very important work, and the continuation of the production of our mill is [403] of vital importance and therefore I tried in every way possible to make a settlement with Mr. Jennings. I even indicated regardless of whether these men that I discharged were right or wrong that we would go a long ways in settling; even to offering them their pay and reinstatement to the job providing they let the men have the union that they wanted to vote for; whether it would be AFL, CIO or IOU. It didn't make any difference. And Mr. Jennings just constantly refused right along and he wanted—no question, he wanted the AFL.

Q. Mr. Cheney, have you any objections to the AFL being at the plant?

(Testimony of B. B. Cheney.)

A. I don't have any objections to any union coming in.

Q. Why then, Mr. Cheney, are you adverse to the AFL being installed at the plant under the existing circumstances?

A. I don't want any union that the boys don't want rammed down their throats and I know Mr. Jennings told me that he had 40 CIO cards—you told me that yourself—therefore it was indicative that the CIO was apparently working. A lot of the boys I know have said that they don't want the union. I've heard that expressed and there are others that are very strong, very strongly want the AFL, and all we want as a company policy is for these men to have their own choice and I have stood firmly on that all the time; but these boys are being denied that right and that is all that [404] we ask, is that these men have their own choice.

Q. Well, Mr. Cheney, have you offered to allow an election and encouraged that another election be held at the plant?

A. We have repeated the offer a hundred times to Mr. Jennings, that that is all we wanted. We don't care what union it is, just so these boys have their rights. And as I said, we indicated that if he would do that we'd go a long way to settling this case. This takes a lot of our tax money to carry on this thing. It takes our time. I had to bring a man out from Washington and I think the evidence here is that there is no hard feeling among

(Testimony of B. B. Cheney.)

any of us, if a blame good crew—and I think there is the finest kind of relationship between the company and the men—and there shouldn't be any of this trouble. This is just going to a lot of expense and folly that none of us should be here for.

Q. Well, now, Mr. Cheney, was the company experiencing any trying times or any difficulties during the month of May, particularly the 22nd of May, 1943?

A. Yes, it was because of the breaking of that chain I was here in April. The month of April I had been coming along, and we were having persistent trouble and when I was here in April at the time that Mr. La Fluer was down to install the hog and they were throwing the edgings in the mill and it broke down numerous times while I was here, because—for one cause. And I asked Herman Higday to go and ask Glenn [405] and Allan not to put the strip in the conveyor and that afternoon Mr. Allan threw a strip like a little kid—

Mr. Jennings: Mr. Examiner, I object to that unless Mr. Cheney indicates that he has personal knowledge of it, no indication that he has any knowledge of it.

Mr. Cheney: I wanted to speed these things up, but if you want him to answer each question as it is asked I'll do that.

Trial Examiner Ward: Confine it to the question and omit characterizations of persons involved.

(Testimony of B. B. Cheney.)

Q. (By Mr. Cheney) Just tell us, Mr. Cheney, the difficulties that the plant was experiencing at the time. That is, if they had trouble on various things around there; what they were, and why the men weren't getting steady employment.

A. That is it. It was down and we had to lay off so many times and naturally we wanted to run to complete our contract and the men wanted continuous operation because spring was here, and we wanted to give the men that continuous work, and because of the throwing of the strips in the conveyor it was causing it to break down; and causing—which if there was any unrest at that time, and as the union organizer said, maybe that is what made the boys ripe as he put it, and got in his lucky break when he signed them up in front of the Post Office. It was things like that that [406] caused it.

Q. It was testified here yesterday by the union organizer, Mr. Wyatt that he found the boys ripe, as he put it, and that it was a lucky break that they were all—or a majority of them were standing in front of the Post Office.

Q. And Mr. Cheney, would you state the conditions at the mill which made those men ripe, or laid those men off at that time?

A. Well, the condition at the time that I think that he found the boys ripe, was there was a spring storm, a freshet and the tailing stem up above where an old mine had been up on the hillside, and the stream ran from that tailing stem down through our

(Testimony of B. B. Cheney.)

pond and it brought the tailings down and filled the pond with silt.

Q. Did it fill the pond to a point where——

A. It filled it so you could walk right across what is today's water level. You could walk across the pond and it was necessary to close the mill down and re-dig the pond; which was quite a job. [407]

Q. Mr. Cheney, have you at any time made any remark or attempted in any way to persuade the employees of the Cheney California Lumber Company in regard to their affiliations with the union?

A. No. We want these men to have the union of their choice.

Q. Have you ever called them in a meeting and talked to them about unions?

A. No, never.

Q. Have you ever instructed Mr. Pease to call the men together and to instruct them in their union activities?

A. Never. It's not a company policy to do that.

Q. Were you aware that Mr. Pease did call the men together?

A. No, I never knew anything about that.

Q. It was done without your consent?

A. Done without our knowledge and consent; that is right, because I want to say to the boys, everyone of them here, they know if they have ever talked to me, that I have always told them that I want them to have what they want.

Q. You at the present time then are willing that the men have an election and they take the union of their own choice regardless of what it should be?

(Testimony of B. B. Cheney.)

A. That is right. More than willing. We want that, we request that.

Q. Did you ever offer to take back any of these men that [408] were discharged?

A. I indicated that we would even take the men back and pay whatever penalty is necessary in order not to have to lose time and cause all this unrest because of the important contract and the important work that these men are doing; that our production was of the utmost importance.

Q. What was the stumbling block, you might say, in your negotiation with the union and with Mr. Jennings in regard to a settlement?

A. That he very cleverly worked around that, always regardless, even offering to take Glenn and Allan back, that Glenn's vote counted. There was only one reason behind it, that the AFL be put in here or a union be put in on the boys, without them having a chance to vote on it.

Q. In other words, you would take these men back and pay the penalties if the men were given the right to vote?

A. That is right.

Q. Did you feel at the time of the election on May 22, 1943, that the men were in such mental condition you might say, because of the quibbling that was going on, that they weren't, you might say, able to choose or didn't have a fair chance to choose the union?

A. No, I wouldn't say that. I would say that it was a fair chance and the votes showed that it was

(Testimony of B. B. Cheney.)

16 to 16 and therefore it was tied and there was no settlement. Since [409] that time apparently another union has come in and then I have heard a lot of the boys tell me, "Well, this thing has gone on and caused so much trouble here that we don't want any union at all", so there is three different factions and I want the boys to have the faction that they want. I want them to have their choice and even offering—I have gone a long ways because I personally had Allan and Glenn discharged: and they should not—their votes absolutely shouldn't count because they were discharged for good cause. We don't discharge anybody unless there is a just cause, and I requested of Lionel Pease to discharge those men after I personally asked them not to throw in the strips, and in addition to asking them myself the day before they were fired I asked Herman several times and he went over to them. They asked me if they could meet with me and talk it over that evening and I told them I would be glad to come down and talk to them at 7:00 o'clock: which is also a policy of the company. We will always discuss any trouble with our employees. They are always more than welcome to come and talk over anything, and that is the way that a lot of trouble can be avoided and have the closest relationship with our men.

Q. Mr. Cheney, could you state that during your experience as head of these different companies how many men you have asked to be fired?

(Testimony of B. B. Cheney.)

A. Well, I have never caused any man. These are the first [410] two that I have ever caused to be fired.

Q. These are the first two that you have ever fired? A. Ever.

Q. Then as I understand it, Mr. Cheney, you are willing to take them back to work and do everything that was asked of you providing that they gave the men a chance to call another election?

A. I indicated my willingness to go that far in order to give these boys a right to vote for whatever they wanted.

Q. And that was refused? A. Absolutely.

Q. And who refused that?

A. Mr. Jennings.

Q. Are you willing at this time to have an election? A. At any time. That is what we want.

Mr. Cheney: That is all.

Cross Examination

Q. (By Mr. Jennings) Regarding settlement, are you willing at the present time to offer reinstatement of Mr. Glenn?

A. Providing that the boys are given a chance for an election.

Q. Are you willing to grant a reinstatement to Mr. Allan?

A. No, I don't think so under his testimony this morning what I saw of him.

Q. Well, all of your offers to work out some settlement [411] are conditional upon the election

(Testimony of B. B. Cheney.)

that the Board held not counting and another election being held?

A. That is right. That the boys be given a chance to vote for what they wanted.

Q. Has your insistence been that if they wanted no union they should have the right to choose no union?

A. Whatever the boys wanted; that is up to the boys.

Q. And you felt that possibly they wanted no union?

A. No, I don't know what they want. You indicated that there was some 40 CIO cards. I didn't know that there were that many. I heard some of the boys say "I'm CIO". Other boys say "I'm AFL". And other fellows said they have had so much trouble here I don't want any union. So there are three factions. I don't know.

Q. As a matter of fact, didn't you tell me that you heard there were 30 CIO cards?

A. No, I did not. You told me that. You told me in front of Mr. LaFluer. You indicated that Mr. Hawson, I don't know who he is, or I didn't know until you mentioned him, I had never heard of him. You said they had turned over 30 CIO cards over to you.

Q. Isn't it true that I explained to you that my only job here was to handle this complaint case and that I had nothing to do with the representation case?

(Testimony of B. B. Cheney.)

A. You said that, but I suggested that surely in your [412] capacity if the Government wants to expedite working these things out, that an indication to your National Labor Relations Board would be fair to the men, and settle this case and get the thing behind; and let the men have an election.

Q. Didn't I tell you the first thing to do was settle the complaint case and then talk about an election?

A. That is the very thing that you're coming back to all the time. You're going to put in a union without an election.

Q. Answer my question. Didn't I tell you the first thing we have to do is clear up the unfair labor practices and then we could talk about an election; isn't that true?

A. You might have said that but your whole thought, your whole story to me was to put over a union without giving the boys a chance.

Q. And I offered you a complete stipulation providing for a settlement of the unfair labor practices, didn't I?

A. Yes, but in that—

Q. And you refused to accept it?

A. Absolutely, I refused.

Q. When you put Lionel Pease down here as manager you knew something about him, didn't you?

A. Yes, I did.

Q. You knew he was anti-union?

A. No, I did not.

(Testimony of B. B. Cheney.)

Q. How long have you known him? [413]

A. I have known Lionel Pease for about three years, I would say.

Q. You put him down here without knowing anything about his attitude towards the union, or his feeling towards the union?

A. Lionel Pease's background is that of a farmer boy who came from eastern Washington, working on a farm, operated a small mill in some timber that we owned, one of our companies owned, and he was very, very successful. Then we got another tract of timber for him and put him into the second tract and he enlarged his mill and was—I think he he had around 10 or 12 employees and was very successful in operating it and he just looked like a young fellow with a lot of promise, and we needed some one down here and he had just cut out that setting and had done so well in the short time that I thought a fellow of his age—and he had quite a bit of mechanical ability—could come down here and operate this mill.

Q. During the time that you were down in Greenville did you discuss with Mr. Pease the various men working around the mill?

A. We discussed the various jobs when I was down here. It has always been my policy to be around and see what the men are doing and lots of times there may be suggestions, instead of me talking to the mill direct I will talk it over [414] with whomever is running the operation and sometimes

(Testimony of B. B. Cheney.)

the suggestions are workable, other times there are very good reasons why they shouldn't be put into effect.

Q. Now, as a matter of fact, it was your custom to discuss the abilities of various men with Pease when you came down here, isn't that true?

A. Well, we discussed various men, yes.

Q. You secured from him his opinion as to the man's abilities?

A. That is right; naturally.

Q. And you would discuss the abilities of most of the men in the plant?

A. That is right.

Q. Where they'd fit in best and so forth?

A. That is right.

Q. During any of those discussions did you talk about—with Pease—about the question of the men's union affiliation?

A. Never.

Q. Didn't Pease bring that up?

A. Never.

Q. Did you discuss with Pease the abilities of Glenn and Allan?

A. Yes. I asked him about them because as I say they were throwing the strips into the conveyor and I asked over [415] and over again that they not do it, and Pease said, well, they tried Glenn every place in the mill and he wasn't very successful at any of them but he seemed to be trying and therefore he wanted to give him every chance possible, which I would say is a good thing to do.

Q. What about Allan? Did you talk about Allan with Pease?

A. I didn't know Allan. Allan was a new man,

(Testimony of B. B. Cheney.)

and I was here in April when he throw the kiddish fit and then a month later when we asked him not to do it and he continued, he deliberately threw them in I told Lionel that night after work I said, "Just get rid of those two fellows. This thing is too serious, and I want you to fire them the first thing in the morning." That is the first two men as I say of the hundreds upon hundreds that I had had working that I have ever asked to be discharged.

Q. You talked upon Glenn and Allan with Pease more than that, didn't you?

A. No. Our only discussion was of the work.

Q. Where is Pease at the present time?

A. I think he's in Washington or Oregon.

Q. What is he doing?

A. I really don't know.

Q. Were you present when Pease gave a statement to Miss McElroy, the Field Examiner for the Board?

A. No, I was not. [416]

Q. You know that Pease told Miss McElroy that he was the man that fired Glenn and Allan?

A. I told Pease to do it; sure.

Q. He told her that he had fired them; you know that, don't you?

A. Well, I don't know what he said to Miss McElroy but I know that I told Pease to fire Glenn and Allan.

Q. Is Pease working for your company?

A. No, he is not.

(Testimony of B. B. Cheney.)

Q. What company is he working for?

A. I don't think as far as I know he is working for anyone.

Q. Is he working for a related company?

A. He is not.

Q. When was the last time he worked for you?

A. The last time he worked is when he left our employment here late in June.

Q. Where did he go then?

A. He went up to southern Oregon.

Q. Worked in one of your mills up there?

A. He worked a short time as a laborer, just a few days I think, off and on as a laborer, I think only maybe two or three days.

Q. For your company?

A. Only two or three days, yes. [417]

Q. He worked for your company?

A. For one of my companies, yes.

Q. Did you relieve him up there then, send him some other place?

A. No, we did not. He left

Q. What happened to Higday?

A. Higday went up with Lionel. I think it was Lionel's intention to build a sawmill of his own and Higday went along with him.

Q. At the time you fired Glenn and Allan you knew this election was coming up, didn't you?

A. I knew that the election was coming up, yes.

Q. You knew it was to take place the following day?

A. I knew it was posted there, yes.

(Testimony of B. B. Cheney.)

Q. You knew from Pease that Glenn and Allan had both acted in the union, didn't you? That they were active?

A. No, I did not. It wouldn't have made any difference if they had been. It doesn't make any difference to me or to our company what a man's union affiliation is, that is his own business.

Q. Immediately after the election was held the question of counting Glenn and Allan's ballot came up, isn't that true?

A. Yes.

Q. What was your position? [418]

A. My position was that there were three other fellows, three or four that had quit at the time Glenn and Allan and—

Q. Pardon, did Glenn and Allan quit?

A. Or were fired and—or left, whatever you want to call it and they left and so Miss McElroy was very upset that they were going to lose—she and Mr. Wyatt were talking it over. They were just ruined as far as the two of them were concerned.

Q. Will you answer my question, please?

A. Winning the election was your question then.

Q. Will you read the question?

(The question referred to was read by the reporter as above recorded.)

Trial Examiner Ward: Please confine your answer to the question and not offer any self-serving statements.

(Testimony of B. B. Cheney.)

(The question referred to was again read by the reporter.)

A. My position with Glenn and Allan was that their votes would not count.

Q. You insisted that their votes must be counted?

A. Absolutely.

Q. Did the union insist that the votes be counted?

A. Well, I suppose they did.

Q. If the votes were counted then the union would win the election, isn't that true? Didn't you assume that? [419]

A. No, I didn't because I didn't know what the votes were.

Q. What did you assume when you made the statement that if this case were settled and Glenn and Allan's votes were counted the AFL would be rammed down the men's throats?

A. Yes, because after that I found out they were 16 to 16. This came up as to their vote before the election and the reason I started to tell you about Miss McElroy and Wyatt was that they wanted the four men to vote also, and wanted their jobs offered back, or they wouldn't have a chance. So even though these men had left voluntarily I said we will offer, if they want to come back, them their jobs and so they immediately—Miss McElroy and Wyatt rushed up town in their car and brought—

Mr. Jennings: Mr. Examiner, I haven't asked any question which would elicit any of the testimony that the witness is giving now.

(Testimony of B. B. Cheney.)

Trial Examiner Ward: I have suggested that the witness not volunteer any statement. You are an intelligent witness and you know when you have answered the question. Please confine it to that.

Q. (By Mr. Jennings) You made that statement, didn't you, during the course of your testimony?

A. That is right.

Q. And in making that statement then you assumed that Glenn and Allan would vote for the union? [420]

A. It's quite obvious from the union's attitude of suing us.

Q. And you assumed that from the beginning, didn't you?

A. No, I did not; because I didn't know.

Q. You knew it from Wyatt, from his attitude from the beginning.

A. Well, apparently so. After they were discharged Wyatt was terribly nervous about it and wanted their vote counted but I told them that I absolutely wouldn't stand for it. They were discharged and for good reason.

Q. And you took that position consistently?

A. Absolutely.

Q. Before the election and after the election?

A. Not before the election, after Glenn and Allan were discharged.

Q. And that was on the assumption that their vote was in favor of the union, is that right?

(Testimony of B. B. Cheney.)

A. Well, it was quite obvious.

Mr. Jennings: That is all.

Redirect Examination

Q. (By Mr. Cheney) Mr. Cheney, on cross examination Mr. Jennings brought up your opinion as to the votes of Mr. Allan and Mr. Glenn. Did you ever see their ballots? A. No, I did not.

Q. You don't know how they voted? [421]

A. No, sir.

Q. You stated that in the attitude of Mr.—that union representative—that no doubt the votes were in favor of the union? A. Very obvious.

Q. Now, Mr. Cheney you stated that you asked Mr. Pease to discharge Mr. Glenn and Mr. Allan?

A. Yes.

Q. Now, what was your true position as to Mr. Glenn and Mr. Allan voting on the 22nd? They were discharged I guess, on the 21st, was it—did you refuse to count their ballots because you knew that they voted for the union, or because they were no longer employees of the Cheney California Lumber Company?

A. Only because they were no longer employed by the company. [422]

LINDSAY GLENN

a witness called by and on behalf of the National Labor Relations Board.

Direct Examination

Q. (By Mr. Jennings.) You have been previously sworn? A. Yes.

Q. You know Mr. Manning, don't you, the sawyer in No. 3 saw, I guess we'd call it?

A. I do.

Q. Do you recall any occasion upon which Mr. Manning had a discussion with you about strips being thrown on the big conveyor?

A. Yes, one time. One morning just before work hours the conveyor was piled full of them and he come along and said something about it and I said "Well, the night watchman threw the strips in because I haven't started to work yet", and that is all the conversation that him and I had about the strips.

Q. Do you know when that conversation took place with reference to the date of your discharge?

A. It was before. [423]

Q. How long before?

A. Oh, I don't know just how long, something like—it was quite a while before I was discharged that the strips were in there. They were piled up there you know just a big pile of them. He made a remark or something about it.

Q. How long do you mean by quite a while?

A. I'd say three or four weeks or something like that.

(Testimony of Lindsay Glenn.)

Q. Did you have any conversation with Mr. Manning about the strips thereafter?

A. None, except he said it shouldn't be piled up like that, and I said I hadn't piled them up.

Q. Did you have any other conversation at any later date? A. No, sir.

Q. Is that the only conversation you have ever had with him about the strips?

A. That is the only conversation him and I had.

Mr. Cheney: Well, I might state our position as to the [424] answer. Mr. Cheney and myself as attorney for Cheney California Lumber Company will file an answer to the complaint in this case in which it will deny each and every allegation in the complaint and further set up affirmative matter along the line of the testimony given.

Mr. Jennings: Well, if I might, Mr. Examiner, I should like to state an objection for the record to the filing of an answer at this late date.

Trial Examiner Ward: You may make the objection.

Mr. Jennings: The answer was due ten days after receipt of the complaint. It was not filed at that time, nor has an answer been filed at any time during the hearing.

Trial Examiner Ward: Your objection will be overruled and you have five days from today to mail it to me. [425]

[Endorsed]: No. 10787. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Cheney California Lumber Company, Respondent. Transcript of Record. Upon Petition for Enforcement of an Order of the National Labor Relations Board.

Filed May 29, 1944.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10787

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

CHENEY CALIFORNIA LUMBER
COMPANY,

Respondent.

**MOTION FOR LEAVE TO PRINT SUPPLE-
MENT TO RECORD AND FOR EXTEN-
SION OF TIME**

Comes now the National Labor Relations Board, petitioner herein, by its Associate General Counsel, and respectfully moves this Court for leave to print a supplement to the printed record herein, and for an extension of time for filing and serving the Board's brief to a date fifteen days after receipt of the printed supplement to the record. In support thereof the Board shows as follows:

1. The Board's petition for enforcement, the certified record of the proceeding before the Board, and the Board's designation were filed in this Court during the latter part of May, 1944, and copies of the petition and designation were served upon opposing counsel, at the same time. Insofar as the Board is advised, respondent did not file an answer to the petition or a counter-designation of additional portions of the record.

2. Following receipt of authorization from the Board, the Clerk of this Court printed the record in accordance with the Board's designation, and thereafter, filed and served the necessary copies. In the interim, the Board's brief had been prepared from a duplicate copy of the certified record retained by the Board.

3. On October 5, 1944, the Board was preparing to send its brief to the Government Printing Office for printing, and while transposing the references from the certified record to the printed record, counsel noticed that none of the portions of testimony contained on Pages 129 to 275 of the certified record had been included in the printed record. Further examination revealed that through inadvertence an entire section of the Board's designation had been omitted in typing, so that the designation filed with this Court omitted some 100 pages of relevant and essential testimony. In view of the provisions of Rule 19 (6) of this Court, the Board asks leave of this Court to print a supplement to the record containing those portions of the certified record set forth in Appendix A hereof.

4. The Board's brief is complete and ready for printing except for insertion of references to those portions of the testimony referred to above, but cannot be printed until after receipt of the printed supplement to the record. Accordingly, the Board requests that it be allowed a reasonable time after receipt of the supplement for printing and filing its brief.

Wherefore, the Board respectfully moves the Court for the entry of an order granting leave to the Board to print a supplement to the printed record herein, and granting an extension of time for filing and serving its brief, to a date fifteen days after receipt of the printed supplement.

NATIONAL LABOR RELATIONS BOARD

By **MALCOLM F. HALLIDAY**

Associate General Counsel

Dated at Washington, D. C., this 7th day of October, 1944.

District of Columbia—ss.

Malcolm F. Halliday, being first duly sworn, states he is Associate General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing motion and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

MALCOLM F. HALLIDAY

Associate General Counsel

Subscribed and sworn to before me this 7th day of October, 1944.

[Seal]

JOHN E. LAWYER

Notary Public, District of
Columbia

My Commission expires August 14, 1949.

Ordered petitioner granted leave to have printed a supplemental transcript of record consisting of portions designated together with any portions designated by respondent within time provided by rule.

FRANCIS A. GARRECHT
WILLIAM HEALY

United States Circuit Judge

[Endorsed]: Filed Oct. 12, 1944. Paul P.
O'Brien, Clerk.

(Testimony of Albert Roy Norberg.)

Recross Examination

Q. (By Mr. Cheney): Did he say why he was firing them?

A. Just because we were talking too much.

Q. Did he threaten—or I will put it this way. Did he let you go? [129]

A. Well, he undoubtedly fired me because I got those two checks.

Q. Did he fire you?

A. Well, I really couldn't answer that but I got two checks.

Q. You continued to work?

A. That is right.

Q. Every day? A. That is right. [130]

HAROLD ARNOLD NORBERG

a witness called by and on behalf of the National Labor Relations Board.

Direct Examination [131]

Q. Now, do you recall an occasion during approximately March of this year when Mr. Pease talked to you about your brother Albert?

A. That is right.

Q. Do you recall approximately when it was that Mr. Pease talked to you?

A. No, I really don't.

(Testimony of Harold Arnold Norberg.)

Q. Was it during the month of March or April, do you remember that?

A. Oh, no. It was later than that.

Q. Do you remember whether or not Clayton Block and Ira Ware were working at the time he talked to you?

A. Yes, they were working.

Q. They were employed at that time?

A. Yes.

Q. Where did Pease talk to you? [132]

A. He called me in the office.

Q. What did he say to you?

A. Well, he said those three guys had been doing too much talking.

Q. Which three guys, did he name them?

A. Clayton Block, Albert and Ira Ware.

Q. Clayton Block, Ira Ware and Albert Norberg, your brother? A. Yes.

Q. Can you give us in as detailed fashion as possible exactly what Pease said to you at that time?

A. Well, Pease said he had already decided he was going to lay Clayton and Ira Ware off, and he thought he'd have to lay Albert off too if he didn't quit talking so much. It was causing too much hard feelings.

Q. Did he tell you what they had been talking about?

A. Well, he mentioned Ira Ware in regard to the Union, but he didn't say anything about the

(Testimony of Harold Arnold Norberg.)

others although he did mention them all three together as talking too much.

Q. What did he say about Ira Ware and the Union?

A. Well, he said he was stirring up too much trouble trying to get the men organized, too much hard feelings.

Q. What did you say to Pease?

A. In regard to who?

Q. In regard to your brother Albert?

A. Well, I told him that I thought he ought to give Albert [133] another chance; that if it was just talking too much that was the trouble why he should at least have a talk with him before he fired him and give him a chance anyway. But I told him that there was nobody else out there that could really handle that carrier at the time as good as he could and it would be a handicap to us too if he would fire him because then we'd have to take a lot of split unit and everything while somebody else was learning.

Q. You're a loader there, aren't you?

A. Yes.

Q. And Albert Norberg, your brother, carries the load over to where you load them on the cars?

A. Yes. And I told him that I thought he better leave him on there, or else I didn't care whether I stayed either. I told him that I'd just as soon quit too after try and let somebody else learn to drive it because we had been handicapped for quite a while, while they were learning; when he first

(Testimony of Harold Arnold Norberg.)

started learning and we didn't want to have that to go over again.

Q. Did Pease make any promise to you about what he was going to do in regard to your brother Albert?

A. Well, he said he'd let him stay on the job then, he wouldn't fire him.

Q. Did he say anything about Clayton Block and Ira Ware?

A. Well, he just mentioned that he was going to lay them [134] off. That was definite.

Q. Did he lay them off? A. Yes, he did.

Q. Do you recall an occasion after Mr. Boyd Wyatt of the Union had come out to the plant when Mr. Pease called all of the employees together and talked to them? A. Yes, that is right.

Q. And do you remember whether that was— what time of the year that was?

A. Well, I didn't expect to have to remember that date. I didn't keep track of them at all.

Q. Was that during the period when Mr. Wyatt was trying to organize?

A. Yes, I think it was.

Q. What time of day did Mr. Pease speak to the employees?

A. It was after work at night.

Q. Where?

A. Right in front of the office.

Q. And how were you called together there?

A. Well, everybody always stops there to make out their time and then he just mentioned he

(Testimony of Harold Arnold Norberg.)

wanted to talk to them a few minutes before they went home.

Q. Now, what did Pease say at that time?

A. Well, he brought the Union up the first thing; then he mentioned that he understood we was wanting a Union in there [135] and he said he really didn't see why we needed any. He'd pay union scale and I don't remember if that was the time he granted seniority or not. I believe we had two meetings.

Q. Did he have two meetings in 1943?

A. I think there were two meetings.

Q. Do you remember anything else he said at the first meeting?

A. Well, no. I don't really remember.

Q. Now, you say he called another meeting some time later?

A. Yes, he did.

Q. A few days later or quite a while later?

A. Well, I don't remember just how much later it was.

Q. Was the Union still trying to organize the employees?

A. Was what?

Q. Was the Union still trying to organize?

A. Yes.

Q. And did he call the men together in the same fashion the second time?

A. Yes, and he told them that he'd grant them seniority and we decided that seniority was the main thing we wanted there because there was a lot of the older men that weren't getting promoted the way they felt they should be and he said he'd

(Testimony of Harold Arnold Norberg.)

see that they got seniority. So we told him well, if that was it we'd just drop the case of the Union.

Q. Did he offer anything else except seniority rights? [136]

A. Well, I don't just remember if he did or not.

Q. Did he say anything about wages or hours or other conditions of work other than seniority?

A. He did mention if there was any adjustment in wages or anything, why, just come to him and he'd try and straighten them out, whatever was satisfactory.

Q. Did he suggest any alternative to a union organization? Tell the employees how they were to handle this seniority matter?

A. Well, it was—it seems to me that he had—he said that there should be a committee of three appointed to decide which ones should have seniority, which ones should have certain jobs and which ones were capable of handling them, and so forth.

[137]

Q. Was such a committee appointed?

A. Yes, I think there was.

Q. Do you recall who were members of the committee?

A. Well, let's see, Jake Williams was one and—I don't just remember who they were now.

Q. Lindsay Glenn and Harry Major, is that right? A. I think that was it.

Q. (By Mr. Jennings): Now, do you recall whether the question of seniority rights came up after this committee was appointed, the dispute as

(Testimony of Harold Arnold Norberg.)

to whether a certain employee was entitled to a job because of seniority?

A. Well, I don't remember whether that came up before or afterwards.

Q. Do you remember an occasion when a question of Lindsay Glenn's seniority was raised?

A. Oh, yes; I remember Lindsay. He asked Lionel in front of the bunch of us one night. He said that he thought he had seniority enough to hold the oiling job and he felt he should have it, and Lionel the Sunday before that had promised him that if he thought he should have it, why, they should take a vote on it and if he *could* the job, why he'd be perfectly willing to let him have it. Well then, the next night why he flared up and he said that Lindsay couldn't handle [138] any job in the mill.

Q. Did Lindsay Glenn get the oiler job?

A. No, he didn't.

Q. Did you investigate the question of his seniority over the man who got the job, that is, did Glenn have seniority over the man who actually got the job?

A. Yes, I guess he did. They had Lindsay's seniority dropped way down from what it should be, but they had a dispute over that and then they set his seniority up where he thought it should be, and that did put his seniority ahead of George Christiansen.

Q. Did Christiansen get the job anyway?

A. Yes, he did.

(Testimony of Harold Arnold Norberg.)

Q. Now, after Glenn didn't get this job did you have opportunity to observe whether or not he became active in the Union?

A. Well, he was quite active all along. I don't know as he was any more active after that.

Q. By the way, when you were talking with Mr. Pease about the discharge of Ware or Block did Pease indicate that either one of them were not good workers, either Block or Ware?

A. No—well, he didn't say anything in regard to whether Block was or not, but he didn't say anything about Leown's work at all. He just mentioned that he had been talking too much, but there was nothing mentioned about his work. [139]

Q. Were you asked about the petition, was it presented to you?

A. No, not personally, we were free to vote or put our name down or put yes or no, either way.

Q. Where did you see the petition?

A. Well, it was hanging on the wall between the shop door and the office, right between the window and the shop door.

Q. Did either Pease or Higday say anything to you about the petition?

A. No, they didn't.

Q. By whom were you hired, Mr. Norberg?

A. Pease.

Q. During the time that Pease was there who was in charge of the operation?

A. Lionel Pease was.

Q. And who did the hiring and the firing?

(Testimony of Harold Arnold Norberg.)

A. Lionel. [140]

Q. Is that true of the time during all of the time he was there?

A. Well, I remember Jake saying that he did hire one or two fellows there, but I think Lionel was gone at the time, that was last summer.

Q. That is, part of last summer Lionel Pease was gone? A. Yes.

Trial Examiner Ward: When you say last summer do you mean the summer of '42 or the summer of '43?

The Witness: The summer of '42.

Q. (By Mr. Jennings) During the summer of '42 Jake Williams was the foreman, is that right?

A. Yes.

Q. Now, while Pease was away during the summer of '42 who took his place?

A. Jake Williams. Well, this might have been just for two or three days or a week that Lionel was gone but Jake did.

Q. That is, Jake Williams had the authority that Pease possessed during the time that Lionel was gone? A. Yes.

Q. During the time that Lionel Pease was there what authority had Williams?

A. Well, he was foreman.

Q. And in the course of his job as foreman, what did he do?

A. Well, he mainly told the boys which jobs they should [141] work on and where they should

(Testimony of Harold Arnold Norberg.)
work. That is, some job that they didn't stay on the same job steady.

Q. Did he do any hiring or firing himself?

A. Well, nothing but these two cases I remember of that he had. I don't think he ever fired anybody that I know of.

Q. Do you know whether or not he discharged anybody or recommended they be discharged?

A. I don't believe he did.

Q. What about Mr. Higday? What was his authority during the period of time he acted as foreman?

A. Well, just kind of walked around and watched the boys to see what they were doing.

Q. Did he put them on their jobs?

A. Well, sometimes he did, sometimes he didn't.

Q. Did he work? A. No.

Q. He spent all his time in supervision?

A. Well, he did work at mechanic work sometimes and he did help on repairing the mills when he first became foreman, but later on, why, all he'd do was just kind of show the boys around.

Q. Now, during the time when Pease was away and while Higday was foreman who took Pease's place?

A. Well, Higday did. That is the only other one they had there to take his place. [142]

Q. And did Higday exercise the authority of Pease while Pease wasn't there?

A. Well, yes; he got the mill started up in the morning.

(Testimony of Harold Arnold Norberg.)

Mr. Jennings: That is all.

Cross Examination [143]

Trial Examiner Ward: May I interrupt for one question? How many months out of the year do you work normally?

The Witness: Well, I imagine—the mill starts up about the 1st of April.

Trial Examiner Ward: About the 1st of April.

Mr. B. B. Cheney: We try to start the 1st of March.

The Witness: Well, yes; from the 1st of March.

Trial Examiner Ward: When does it usually close?

The Witness: Until the 15th of December, something like [144] that.

Trial Examiner Ward: March to December?

The Witness: That is right.

Trial Examiner Ward: Approximately nine months?

The Witness: Yes, about that.

Q. (By Mr. Cheney): Did you do any work in between those times from the date in December that you speak of—

A. Oh, yes, the mill did run some off and on in between there.

Q. I understand that Mr. Pease called you into the office to talk to you about the three guys, as you said, those three guys doing too much talking, did he name those three guys?

A. Yes, Albert Norberg and Leown Ware and Clayton Block. [145]

(Testimony of Harold Arnold Norberg.)

Q. (By Mr. Cheney): Well, then, let's put it this way. How long before they were fired did he call you into the office?

A. Oh, approximately two weeks, something like that.

Q. Two weeks before?

A. Yes. It might not have been two weeks before Ira Ware was fired but it was before Clayton Block because he was in the hospital at the time.

Q. Clayton Block was in the hospital?

A. Yes. [147]

Q. Now, do you recollect Mr. Pease ever saying anything to you after they were discharged as to why he discharged them?

A. Well, Lionel made the statement in the office that Leown was stirring up too much trouble about the Union. He did make that statement.

Q. That was before he was discharged?

A. Yes.

Q. But he never made any statement to you after he was discharged as to why he was discharged?

A. No, he never did. [148]

Q. Suppose a man started working and he worked for, say, a month and then quit and went off some place else and worked and then came back. How would his seniority be worked?

A. Well, he wouldn't have any.

Q. Just continuous employment?

(Testimony of Harold Arnold Norberg.)

A. But during the time the mill was down why your seniority runs. [151]

WILLIAM NOLAN BEEM

a witness called by and on behalf of the National Labor Relations board.

Direct Examination

Q. How long have you been employed by Cheney?

A. I went to work the 27th of March, 1942. [155]

Q. Do you recall any conversation that you had with Lionel Pease during 1942 with respect to the Union?

A. Well, yes.

Q. Will you tell us when this conversation took place?

A. Well, I couldn't give you the date because I can't remember the date.

Q. Was it in the summer or the fall or when?

A. I think it was in the summer.

Q. 1942? A. Yes.

Q. And do you recall where it took place?

A. Where my conversation took place?

Q. Yes.

A. Well, my conversation took place in the office.

Q. And who else was there?

A. There wasn't anybody else in there.

Q. What was said at that time?

A. Well, I told him—asked him if he knew what

(Testimony of William Nolan Beem.)

he was [156] doing in regards to fighting the Union and he said he didn't care much what he was doing. He was doing as his own duty—he was doing his duty. I asked him if he knew the penalty of it and he said he didn't know as there was any penalty attached to it. I advised him to get the Wagner Act and read it and he would find out what the penalty was.

Q. Now, prior to the time that you had this conversation with Pease had Pease talked to the men about the Union?

A. Well, he had talked to them that evening in front of the office about the Union.

Q. Do you remember what he said?

A. Well, he said that he didn't care to have the Union started, said we were satisfied and he didn't want it changed, he wanted it kept that way. Just like a big family there, and he hated to see the boys pay out their hard earned money to keep up a Union.

Q. Did he say that to all of the employees or just to you?

A. Yes, he said that to all of them.

Q. Was that in front of the office there after work?

A. Yes, sir.

Q. And then after that you went to Pease in the office and talked to him?

A. Yes, sir.

[157]

KENNETH R. C. BLAIR

a witness called by and on behalf of the National Labor Relations Board.

Direct Examination

Q. Are you related to Mr. Allan? A. Yes.

Q. Leslie Allan?

A. Yes. He's my brother-in-law.

Q. Do you recall an occasion in 1943 when Mr. Allan wrote to you asking you to inquire about a job for him? A. Yes.

Q. And did you inquire of Mr. Pease?

A. Yes.

Q. And what did Mr. Pease tell you?

A. He had his bookkeeper, his brother there, Kenny Pease to write a letter to him, telling him that he had a job here.

Q. Where was Leslie Allan at that time?

A. He was at Clayton, Oklahoma. [167]

Q. And when you talked to Mr. Pease, did you tell him about Leslie Allan's experience in the lumber industry? A. Yes.

Q. Mr. Pease told you he'd hire Leslie Allan?

A. Yes, sir, he'd hire him.

Q. And did Leslie Allan thereafter come out and go to work? A. What was that?

Q. Did Leslie Allan then come out and go to work for the Company? A. Yes, sir.

Q. Now, calling your attention to September of 1942, were you working at that time for the Company? A. Yes, sir.

(Testimony of Kenneth R. C. Blair.)

Q. Was Mr. Pease at that time the Manager, the Superintendent at Greenville?

A. Yes, sir.

Q. Do you recall an occasion when Alvin Waitts tried to sign up a number of the employees in the Union? A. Yes, sir.

Q. And do you remember at that time a speech that Mr. Pease made to the employees?

A. That evening after work.

Q. Yes? A. Yes, sir. [168]

Q. Do you remember approximately when that speech was made?

A. No, I don't. It was along in September, though.

Q. 1942? A. 1942, yes, sir.

Q. And who were present at the time Mr. Pease talked?

A. Well, I don't know just who the biggest majority of the crew was.

Q. You said it was after work? A. Yes.

Q. And the crew had just left the mill and gathered in front of the office?

A. Yes, the crew was there in front of the office.

Q. What did Mr. Pease say at that time?

A. He just said that he didn't want a Union, and if there was anything that we wasn't satisfied with, to come to him and he'd see if he couldn't settle it with us without having a Union. [169]

RUEL FRANKLIN SMITH

a witness called by and on behalf of the National Labor Relations Board.

Direct Examination [172]

Q. Do you recall an occasion some time in 1943 when Mr. Wyatt, in front of a group of the men, requested the Company, through Mr. Pease, to recognize the Union? A. In '42?

Q. '43. A. Yes, sir.

Q. Now, were you present at the time Mr. Wyatt made that request? A. Yes, sir.

Q. Do you recall who else were present at that time?

A. I don't believe I could call all their names. There were several of them.

Q. Give us some of them who were there besides yourself and Mr. Wyatt and Mr. Pease.

A. I believe Mr. Ware was there, and Clyde Quinliven, and frankly, I wouldn't know any of the other names. There were several more boys there, but I couldn't call their names.

Q. And do you remember what Mr. Wyatt said at that time, and what Mr. Pease said in reply?

[173]

A. Well, he just asked him—told him that he had several of the cards signed and wanted to know what he thought about the conditions of the Union, and he told him that he didn't like it at all and he wouldn't accept the cards. It would have to go to an election, and so forth and so on.

Q. Do you recall what statements Pease made

(Testimony of Ruel Franklin Smith.)

at that time about the Union or his feelings toward the Union?

A. Well, he said that he didn't like it, and if it went Union he'd lose some of the best men he had out there.

Q. Were you working at the time?

A. Well, I was on the payroll. I wasn't working that week.

Q. Were Clayton Block and Ira Ware working as far as you knew about that time? That is, were they on the payroll so far as you knew?

A. That day?

Q. Yes.

A. I don't think so.

Q. Do you know whether or not—they weren't working in the mill at that time?

A. No, they wasn't working that week.

Q. Had you heard that either one of them had been fired? [174]

A. Not at that time.

Q. Did you hear shortly thereafter that they had been fired?

A. I think the best I remember, that was on Thursday, I don't remember the date, when I came back on the job on Monday at noon, I heard they were fired.

Q. At least you heard that Ira Ware had been fired?

A. Yes, and Clayton Block.

Q. Now, you remember just about in that same time that you went down and asked Mr. Pease for your check?

A. Yes, sir.

Q. And was that—when was that with respect to the time Mr. Wyatt spoke to Mr. Pease about recognition?

(Testimony of Ruel Franklin Smith.)

A. That was the day that Mr. Wyatt was out there.

Q. The same day? A. Yes, sir.

Q. And you went in to get your check?

A. Yes, sir.

Q. And did you have a conversation with Pease at the time you got your check?

A. I asked him—I told him that my brother was at Pittsburg and was fixing to be shipped across the waters, and I wanted to go down and see him and I'd like to get my check. And he said "Okay, but I don't like to sign a Union man's check." [175]

CLAYTON BLOCK

a witness called by and on behalf of the National Labor Relations Board.

Direct Examination

Q. (By Mr. Jennings): Mr. Block, were you employed by the Cheney Lumber Company prior to March or April 5th of 1943? A. Yes, I was.

Q. When did you go to work for them, for the Cheney Lumber Company?

A. Some time in May in '42.

Q. And what jobs did you hold during the time you were working out there?

A. Well, I was—my regular job was two by fours, but I [180]—did work on the well.

Q. You were working on the green chain?

(Testimony of Clayton Block.)

A. Yes, pulling two by fours from the green chain.

Q. And since May of 1942, up until the time you were discharged, did you work pretty regularly at the mill?

A. Well, no. I was off quite a bit on account of infection and appendicitis operation.

Q. You had an appendicitis operation?

A. Yes, I did.

Q. When was that?

A. I think that was July 16th, '42.

Q. And this infection that you speak of, was that in '43? A. Yes, it was.

Q. Did you have any other illness during the time you were working there?

A. No, none whatsoever.

Q. Did you work steadily other than those two occasions? A. Yes.

Q. Were you laid off during the winter when the mill was shut down?

A. Yes, with the rest of the men.

Q. And when the mill re-opened in the spring were you rehired? A. Yes.

Q. That is in 1943? [181] A. Yes.

Q. And what job were you put on when the mill re-opened in 1943?

A. I was on construction when it first started.

Q. And do you remember approximately when that was, what month?

A. No, I'm afraid I couldn't.

Q. Was it in February or March?

A. I have no idea of the time whatsoever.

(Testimony of Clayton Block.)

Q. In 1943, how long did you work prior to the time you were discharged?

A. I worked up until the night of March 18th. I went in the hospital for the infection.

Q. And about how many weeks had you worked before March 18th?

A. I couldn't tell you that. I don't really know.

Q. Do you know how many pay checks you drew? A. No, I don't.

Q. What job were you working on, did you say, during 1943 you were working on repair?

A. Well, when the mill first started, yes, I was working on repairs.

Q. And then later on you were put on two by fours?

A. When the mill opened, I was put on two by fours.

Q. I understood you to say that March 18th was the last [182] day you worked?

A. Yes, I worked all day the 18th.

Q. And what job were you working on then?

A. On the two by fours.

Q. Pulling two by fours from the green chain?

A. Yes, sir.

Q. During 1943 was your work criticized at any time by Mr. Pease or Mr. Higday? A. No.

Q. The foremen out there? A. No.

Q. Either one of them tell you they didn't think you were doing your work? A. No.

Q. Did they criticize your work in any respect whatsoever? A. None.

Q. Did anything happen on March 18th?

(Testimony of Clayton Block.)

A. No, not a thing. Nothing happened, nobody said nothing, and we were all going to the show that night, and the infection started to hurt a little bit, so I went to the hospital.

Q. You had an infection in your finger, and it started to bother you?

A. Yes, they put me to bed that night.

Q. Who put you to bed? A. The doctor.

[183]

Q. How long were you in bed with the infected finger?

A. Five days. They let me out, I think it was on the 23rd.

Q. And were you up and about on the 24th?

A. Yes, sir.

Q. Did you come downtown in front of the post office where the rest of the boys were gathered?

A. Yes, I was going over to have my hand dressed.

Q. You were going to the hospital, which is just about across the street from the post office?

A. Yes.

Q. And you saw a bunch of the men gathered together in front of the post office?

A. Yes, he hollered at me, I think. Bud Norberg was with me.

Q. Bud Norberg is Albert Norberg, isn't that right? A. Yes.

Q. You went over then, to where the men were?

A. Yes.

Q. And what was happening at that time?

(Testimony of Clayton Block.)

A. They were signing them up for the Union.

Q. Did you sign up? A. Yes.

Q. Now, prior to the time that you signed up in the Union, had you done any talking about the Union at all? [184] A. Yes.

Q. That is during the time you were working at the mill? A. Yes.

Q. Do you recall one occasion when you and Albert Norberg had some discussion about the Union?

A. Yes, we had discussion about the Union out there with a few of the men.

Q. And with whom did you have the discussion?

A. Well, there was Lionel and George Christiansen and there was Joe-Joe.

Q. Joe Josephson? A. Yes.

Q. And you say "Lionel." You mean Lionel Pease? A. Yes.

Q. And which side were you arguing at that time? A. For the Union.

Q. And who else?

A. Bud, or Albert Norberg.

Q. You and Albert Norberg were arguing for the Union? A. Yes.

Q. Who were arguing against it?

A. Well, the three of them, the ones I remember, there were more around there, there were six or seven, but Lionel and George and Joe Josephson are the only ones I can remember. [185]

Q. That is Lionel Pease, George Christiansen and Joe Josephson?

(Testimony of Clayton Block.)

A. Yes, Herman Higday was there too.

Q. Herman? A. Yes.

Trial Examiner Ward: Fix the time of day of the argument.

The Witness: I couldn't do that.

Q. (By Mr. Jennings) Were you working at that time?

A. No, I was on compensation between the time I got out of the hospital and reported back to work, April 5th, some time, during that time, what exact date I don't know.

Q. Do you remember whether this was after you signed up in the Union or not?

A. It was, yes.

Q. And it was while you were off with this injury?

A. Oh, wait a minute. It wasn't either. It was after I signed up for the Union.

Q. It was after? A. Yes.

Q. How long after? A. I couldn't tell you.

Q. A day or two?

A. I signed up, I guess it was the first or second day after I was out of the hospital. [186]

Q. Now, do you know whether Albert Norberg and these other men were working at the time that you were having this discussion about the Union?

A. Yes, they were working, the mill was running, if I remember right.

Trial Examiner Ward: Was it during working hours, or lunch time?

The Witness: I'm pretty sure it was during working hours.

(Testimony of Clayton Block.)

Q. (By Mr. Jennings) You weren't working yourself?

A. No, I was on compensation.

Q. Now, on which side of this argument did Pease and Higday argue?

A. Why, they were just trying to explain to us where they thought we was wrong about the Union.

Q. That you and Albert Norberg were wrong?

A. It wasn't really no argument. Lionel was just trying to explain to us where he thought that we was wrong about the Union, and Herman, he got—Lionel never got nasty, but Herman got pretty nasty about it. In fact, he got so mad he just walked off.

Q. Herman Higday? A. Yes.

Q. Do you recall what he had to say?

A. Oh, he just called it an "Oakie-flourish," and walked [187] off.

Q. What?

A. An "Oakie-flourish," that is what they call it down there, and walked off.

Q. What did he call an "Oakie-flourish?"

A. Well, the stir-up about the Union.

Q. Now, after you had had this argument, do you recall having talked to Pease?

A. Yes, I talked to Lionel when he fired me.

Q. Now, did you see him between the time you had this argument and the time he fired you?

A. Oh, yes, I was down at the mill practically every day. There was nothing to do;

(Testimony of Clayton Block.)

Q. And did Pease have anything to say to you during that time? A. No. Not much.

Q. Did he say anything to the effect that you were fired?

A. No, I didn't know I was fired at all.

Q. Now, when did you come back to go to work?

A. I come back April the 5th. It was on a Monday.

Q. And did you find your card in the rack?

A. Well, I didn't look. I just went out. I was in the shop where the rest of the men gathered, and I just went out to work. They put Glenn—and my father was pulling on the chain at the time, and Herman come out and told me Lionel [188] wanted me in the office.

Q. Did you actually start in working?

A. Yes—Well, I pulled two or three two by fours from what was left on there from the time before.

Q. And then Higday told you that Lionel wanted to see you in the office? A. Yes.

Q. You went in and saw Mr. Pease in the office? A. Yes.

Q. And what did Mr. Pease say to you?

A. He just told me that he didn't have no longer use for me, and I asked him why, and he said that my work was no good, that he had put me on everything there was, and I wasn't worth—my work wasn't any good whatsoever. And I asked him if it wasn't on account of the Union, and he said, "No." And that was all that was said there.

(Testimony of Clayton Block.)

Q. Now, did you receive a termination notice?

A. Yes, I did.

Q. From Mr. Pease? A. Yes, I did.

Q. Do you recall what the termination notice said upon it?

A. I got two termination notices.

Q. What did the first one say?

A. The first one said, "Failure to do his work."

I believe that is the exact words as I remember. I showed it to a few [189] of the men around there.

Q. Did you take the termination notice from Mr. Pease then when he gave it to you?

A. Yes.

Q. You say you showed it to a number of the men? A. Yes.

Q. Was your father working at that time?

A. Yes, he was, on the two by fours.

Q. Did you show it to him?

A. Yes, him and Glenn, what was on there.

Q. Thereafter did you go back and talk to Mr. Pease further about it? A. Yes.

Q. What conversation did you have with Pease at that time?

A. Well, I got pretty mad. The more I thought about it, the madder I got, and I went back to tell Lionel I didn't think that was very much man in him, firing me for something like that, when he knew, and I knew myself, that I did my work, and so did everybody else in the mill. And he said—I don't know what the conversation was, but

(Testimony of Clayton Block.)

anyway he said personally he had nothing against me, but that my work wasn't satisfactory, and I guess we talked there for twenty minutes and before I left the office I was inclined to believe it myself, the way he talked to me.

Q. Thereafter, did you do anything further? Did you talk [190] to any of the other men about it?

A. Yes, as that conversation went, why, Lionel told me if I didn't think that that was right, I could ask the men about it. And I told him that I thought I would. And that night Glenn's oiling job was coming up, and the men were called on a meeting there, so when Glenn got through, I asked the men about it.

Q. That is you say at this time, the day you were fired, there was some discussion about whether or not Glenn was to have an oiling job?

A. Yes.

Q. And there was a meeting about that?

A. Yes.

Q. And then after that meeting, you talked to the men? A. Yes, sir.

Q. And what did you ask the men?

A. Well, I told the men, I think there was some of them didn't know I was fired, I told them I was fired, and I asked them all—I tried to, I got kind of sore there and blew up, I messed things up, you might say, but I tried to, and I got—I think I got every one of them personally there, and asked them—I had worked with every

(Testimony of Clayton Block.)

one of them during the ten months that I'd worked there, about ten months—and asked every one of them if I did my work or if I didn't, and there wasn't a man there that said that I didn't do my work. [191]

Q. Did you ask Pease then to change your discharge slip?

A. No, I never—oh yes, my discharge slip, yes, I asked him to change that release for me.

Q. Did he agree to change it? A. Yes.

Q. Did he give you a new one?

A. Yes, he did.

Q. He gave you a new one? A. Yes.

Mr. Jennings: I ask that this be marked as Board's Exhibit 3 for identification.

(Thereupon the document above referred to was marked as Board's Exhibit No. 3 for identification.)

Mr. Cheney: No objection.

Trial Examiner Ward: It hasn't been offered yet.

Q. (By Mr. Jennings): Showing you Board's Exhibit 3 for identification, Mr. Block, is that a copy of the termination notice that Mr. Pease gave you at that time? A. Yes.

Q. What did you do with the old notice?

A. Lionel kept that old one.

Q. You gave it back to Lionel Pease?

A. Yes.

Mr. Jennings: I'll offer Board's Exhibit 3 for identification in evidence. [192]

(Testimony of Clayton Block.)

Trial Examiner Ward: It will be received.

(The document heretofore marked Board's Exhibit No. 3 for identification was received in evidence.)

(Exhibit No. 3 printed in full, page 57, Transcript of Record.)

Q. (By Mr. Jennings) Had you had any conversation with Mr. Pease prior to the time he gave you this termination notice in which you advised him that you wanted to quit to take another job?

A. Not Mr. Pease, no. About two weeks before Mr. Pease fired me, when I was still working there, before I had that infection, I was talking to—I don't know, I think his last name is Quigley. He was Alton Jack's Bull Buck. It was in '42 or something when he was Alton Jack's Bull Buck. Well they was telling me—I set chokes for him out in the well, pulling the singers out, and Ray told me that Jack was having quite a time getting a cat skinner, and that he thought he was either going to have to take the loading up there, or he would be on a cat, and he said if he got on the cat himself, that he believed he could get me in setting chokes, and that way I could learn how the cat operated, and later he said there would be a pretty good chance for me to break in on the cat. And naturally, I jumped at the chance.

Q. Did he offer you a job, or had you any promise of a job out at Alton Jack's on April 5th, when you were fired from Cheney's?

(Testimony of Clayton Block.)

A. Through Ray, yes. Through Mr. Jack, no. It was about [193] a week later I talked to Mr. Jacks about it, and—

Q. A week after you were fired?

A. Well, no, before, about a week before I was fired I talked to Mr. Jacks about it, and he said as soon as he got in opeartion and started logging, why, that he could use me, it was on the landing.

Q. Did you tell Mr. Pease that you wanted to quit to take a job at Alton Jack's?

A. No, he didn't know it. I don't know how that come about exactly. I don't remember that. That was quite a while back. I didn't tell Lionel before he fired me, but I believe that night out there, when I was talking to the men, that I told them that I didn't care if Lionel did fire me, that I was going to quit in a couple of weeks anyway, because I had a job with Mr. Jacks.

Q. Did you ask Lionel to change your termination notice so as to show the statement that it contains now?

A. Well, not to those words, no. I just told him that I didn't think that his statement was right, and if I went any place else in the world to get a job, that I wouldn't get the job. That is all there was to it—I did have the job with Mr. Jack's, and that was all right, but if I had took that kind of a release to any other employer right now, why, I would never get a job.

Q. So you asked him to change this so as to clear your [194] record? A. Yes.

(Testimony of Clayton Block.)

Q. And he agreed to change it? A. Yes.

Q. (By Mr. Jennings) So as to make it clear, Mr. Block, at the time on April 5th, when you came to work, was it your intention to notify the Cheney Company that you didn't want [195] to work any longer?

A. No, I wasn't going to notify them until I knew when for sure Jacks could use me.

Q. You didn't know for sure when you could go to Jacks, in other words?

A. No, Mr. Jacks had set the date two or three times that he would start logging, but something happened and he couldn't do it, so I figured I'd go ahead and work there with Lionel until Jacks for sure come and told me personally that he could use me on a certain date, and would. [196]

Mr. Jennings: If the Examiner please, I should like to state at this time the stipulation between counsel with respect to the Interstate shipments made by the Company during July and August, a matter that we were questioning Mr. Cheney on early yesterday morning. It is stipulated that during July of 1943 the Cheney California Lumber Company shipped out of the state from the Greenville mill three carloads of lumber amounting to approximately 80,000 board feet and at a price of approximately \$25 for 1,000 board feet, sales price; that during August the Company shipped out of state from the Greenville mill five cars amounting to approximately 130,000 board feet and at a sales price of approximately \$25 per thousand board feet. May that be stipulated, counsel?

(Testimony of Clayton Block.)

Trial Examiner Ward: The record will so show.

Mr. Jennings: Mr. Glenn, please.

LINDSAY GEORGE GLENN,

a witness called by and on behalf of the National Labor Relations Board. [223]

Q. What has been your principal occupation, Mr. Glenn?

A. For the past years?

Q. Yes. A. Mostly sawmilling.

Q. How long have you been engaged in sawmill work?

A. Between 15 and 20 years I would say at sawmilling?

Q. Were you employed by the Cheney California Lumber Company? A. Yes, sir.

Q. When did you first go to work for them?

A. Something like February, in the month of February, 1942.

Q. And what job did you go on at that time?

A. Building the mills and repairing.

Q. Was the mill in process of being built at that time?

A. Was the mill built, did you say?

Q. Was the mill being built at that time?

A. Yes, sir; there was a mill there but they was doing quite a bit of changing and putting in another mill besides what the had.

(Testimony of Lindsay George Glenn.)

Q. And how long did you continue on that type of work?

A. Until the mill went to operating.

Q. When the mill went to operating what job did you go on? [224]

A. I think the job I went on was turning down, deck man.

Q. And will you tell me just briefly the various jobs that you have worked on at the mill?

A. In the mill?

Q. Yes. Just tell me the story of your employment out there.

A. I worked on every job in the mill.

Q. Well, tell me chronologically.

A. I filed, I cut, stripped, I sawed, I worked on the green chain, I pulled ties, I night-watched, set, in fact, all the jobs there. I am quite sure I did all of them.

Q. Now, during 1942 when you went on this turn-down job, had you any agreement with Mr. Pease with regard to what work you were to do?

A. Well, yes. Before I started to work I was supposed to saw and I went to Mr. Pease and I said, "Mr. Pease, I'm a sawyer, but I haven't cut no ties. If you have a man that you'd rather put on there as tie man," I says, "it won't hurt my feelings. You put him on and perhaps there will be a change later."

"Well," he says, "Glenn, it's your job. You can go ahead if you want to."

"Well," I says, "You are wanting production,

(Testimony of Lindsay George Glenn.)

and if you have a man, a tie man, it wouldn't be right for me to take the job, because I'm a lumber man. I've sawed, but my work has been in lumber."

"Well," he says, "In that case, if you want to," he says, "there is a man I can get, a tie sawyer right now, and [225] you take something like the turn-down, or something around there and watch the grade and then when there in an opening, why you take the sawing job."

Q. Did you continue to work on the turn-down?

A. No, I didn't all the way through. I was working as turn-down man and Mr. Pease come to me and he says, "Glenn," he says, "I'd like for you to go on another job," he says. "I'll raise your wages a little bit," he says. "I've got some men down in the yard there and they're not doing a damn thing," is the way he said it.

He said, "I need you down there. Would you let this fellow here turn down and you go out there?"

I says, "It don't make me no difference, Lionel."

Q. Did he raise your wages at that time?

A. Yes, he did.

Q. How much? A. Ten cents.

Q. What were you getting at that time?

A. I really believe—well, I was undoubtedly getting 80 cents because he gave me 90 cents. As for that, I wouldn't swear just exactly what the wages were on either job, but I did get a raise.

Q. Now, at that time did you have any agree-

(Testimony of Lindsay George Glenn.)

ment with Pease as to what job you were to do or any understanding?

A. At that very time, yes. I was supposed to go out there. He said I got four or five, maybe six, men. I don't know just what they were, but he was building runways for the carrier and the truck to load on, you know, that drive-up [226] in there—and they fixed a place for the carrier to drive over here, and the truck inside, and that was the job.

Q. Now, after you finished that job what did you do next?

A. I believe that I went back on the big mill for a few days. I don't remember.

Q. After that did you get a job that you held for a considerable period of time?

A. No. After that I was more or less on this job or that job all the way through because Mr. Pease said he would—he come to me and asked me, I believe it was on turn-down, I wouldn't say—but anyway, he says, "Glenn, would you hold your wages where they are at and would you work just here, yonder and there if there is a vacancy?"

I says, "O. K."

So that I did.

Q. How do you mean? What did you do?

A. Well, during that time I perhaps turned down on the rig some more and maybe on the green chain. I don't remember. But it was still all over the place, maybe in the planer. In other words, when I came on of a morning I didn't know just

(Testimony of Lindsay George Glenn.)

what job I would get. Maybe I would saw just whatever vacancy there was in the mill, and nobody there to fill it. That is where I would be put—maybe tail sawing.

Q. Did you have any agreement as to how much you were to get?

A. Yes. He said I would hold my wages, as I stated, and for me to work here yonder and there.

Q. Now, did the question of a sawyer's job come up [227] during this time?

A. Yes. Some time after that Mr. Strong was sawing—I don't know,—well, anyway, there was a sawing job come up and the filing, and Lionel come to me.

He says, "Glenn," he says, "I want you to take the middle rig."

Q. That is the sawyer's job? A. Yes, sir.

Q. On the middle rig?

A. Yes. And I said, "Well, O. K., Lionel," and I went and told Clyde Johnson about it. He is the sawyer. I said, "Clyde, the sawing is open here, and the filing."

Well, Clyde said, "To hell with the filing. I wouldn't take it under the hours they got it."

Well, I said, "Clyde, I'll tell you what I'll do with you. If it's all right with you and Lionel," I says, "I'll take the filing. I can't hammer saws but I can file. If you want to, in case the saw needs to be hammered, you help me," I says. "You take the sawing end and I'll take the filing."

(Testimony of Lindsay George Glenn.)

He says, "I'll do that if it's all right with Lionel."

So I went back and talked with Lionel and he says that is all right. "You boys work it out between yourselves."

So I took the filing and Mr. Johnson took the sawing.

Q. How long did you work on this filing job?

A. I'll say some three or four months, I think; and I worked there until I went to see my mother. I took a trip [228] to see my mother, whom I hadn't seen in six years, and when I got back it seemed as though the job had changed.

Mr. Pease come to me and says, "Glenn," he says, "Mr. Beem is an old man and he's not able to do jobs like you can do that comes up. I'll like you to let him have most of the filing and he says, you take a job in the mill and you can do your filing when it is necessary after the mill shuts down," and he says, "That will give you more time."

"Well," I says, "Lionel," I says, "It just don't seem right," but I did, I accepted.

Trial Examiner Ward: This all has reference to '42?

Mr. Jennings: That is right. This is in '42, isn't it?

The Witness: Yes, sir; this is '42 we are speaking of.

Q. (By Mr. Jennings) And how long did you continue to work on this part-time filing job?

(Testimony of Lindsay George Glenn.)

A. Well, I'll tell you. I didn't continue only just the length of time—I cannot state just the length of time, but I went to Lionel. I says, "Lionel, I don't know. Seems like I haven't got much of a filing job here to do and it's such a little," and I says, "furthermore, those edgers are about the worst thing we got. They get all nasty and even wet under there, and" I says, "it seems to me like it's just as well to give all the filing to one man. Because," I says, "he can do her."

And he says, "I'd like for you to put those saws up tonight"—I said I was going to quit,—and he says, "I'd like for you to put them up tonight."

[229]

And I says, "I'll do it. I'll stay here until it's in A-1 shape." And I did. Then that was the end of the filing.

Q. What job did he put you on then?

A. I don't remember, but I believe I went on turn-down again. I don't know.

Q. And did you continue to work at various jobs in the mill? A. Yes, I did.

Q. When there was extra work to do at the mill did you get a chance to do it, over-time work?

A. When there was extra work?

Q. Yes.

A. I used to do quite a bit of it, yes.

Q. I am talking about '42; 1942, I am talking about.

A. Yes, I did. I got some extra work.

Q. Now, did you continue to work in the mill until the winter shutdown?

(Testimony of Lindsay George Glenn.)

A. I worked in the mill until the mill shut down. It came about, I'd say, four or five inch snow and Mr. Pease gathered the men up around the machine shop, some of us in it, and he says, "Boys, this looks like the end of it. What do you think?"

I says, "Lionel, it sure does. I've been here quite a few seasons, and" I says, "it sure doesn't look good."

"Well," he says, "I'm going to leave it up to the men," he says. "If you think we ought to wait and see if this breaks away we'll sawmill, or if you think it's the [230] end of it," he says. "We'll just call it. Anyway, the way you boys want to do it."

I says, "It looks to me it's all of it." And I says, "there's going to be some repairing."

And he says, "I plan on working some of the boys," but he says, "I can't promise much time."

And he says, "If there's any of you wants to be loose or go somewhere else," he says, "It's O. K. with me."

Well, I says, "If it isn't steady, anywhere's near steady, Lionel," I said, "I believe I'd just as soon go down and work below. I can work down there as a carpenter and come back in the spring."

"Well," he says, "That's all right. However, I did intend to work you on this repairing, you know." Well, I said, "Lionel, I don't care about no two or three days a week. If it isn't more than that I'd be just as well off riding on my unemployed as I would working two or three days."

And I said, "I'm going elsewhere and go to work."

(Testimony of Lindsay George Glenn.)

"Well," he says, "that's O. K. You go to work and come back in the spring."

And Mr. Pease gave me a release to go elsewhere to work and says to appear on about April the 1st.

Q. On or about April the 1st?

A. Yes, sir.

Q. You just had a seasonal release so that you had to come back?

A. Yes, that is the way it was.

Q. That was so you could leave and get another job? [231] A. Yes.

Q. Did you take that release and get another job then? A. Yes, sir.

Q. Where did you go to work?

A. I went from there to Lemon Valley over near Reno.

Q. And what job did you work on there?

A. I worked as a carpenter.

Q. And did you return then to Greenville after you finished the job down there?

A. Yes. I finished—I stayed there until they laid some three or four hundred of us off on account of it being finished up.

Q. And you then came back to Greenville?

A. Yes, sir.

Q. And did you work in Greenville?

A. Yes, sir.

Q. Where?

A. I worked at Setzer Box Company.

Q. What job did you have there?

A. I worked in the box factory.

(Testimony of Lindsay George Glenn.)

Q. And do you recall when you went back to work for Cheney in 1943? A. Can I recall?

Q. Yes.

A. When I was down there—

Q. You were down at the mill?

A. I was down at the mill. I went down to the mill and I was standing there where Mr. Wardlew and some of them [232] was putting in these slips there for the little mill, you know, to bring up logs, and Lionel says, "What are you doing, Glenn?"

I says, "Nothing."

He says, "Do you want to go to work?"

I says, "Any time, Lionel."

"Where is your tools?"

I said, "They're at home."

"Well," he says, "jump in the pick-up and go get them."

I went to get the pick-up and some of the other boys had it, and he says, "Well, get some of these boys here to go with you and get your tools" and I got Clayton Block to go up and get my tools for me.

Q. Did you go to work that very day?

A. I did.

Q. Do you remember what month that was?

A. I believe it was in February.

Q. Did you continue to work for the Company during 1943 up until the time you were fired?

A. I did.

Q. And the last day you worked was May the 20th? A. That is right.

(Testimony of Lindsay George Glenn.)

Q. You were fired on the morning of May the 21st? A. Yes, that is right.

Q. You were fired on the morning of the 21st?

A. Yes, sir.

Q. Calling your attention to 1942, do you recall any [233] occasion when Alvin Waitts was trying to induce the employees out there to join the union?

A. Yes. I remember very well Waitts trying it because I was fighting the union at that time my ownself, with him.

Q. And do you remember at that time that Mr. Pease called the men together and talked to them?

A. Yes, sir; I remember.

Q. Where did he call them together?

A. Where did he call them together?

Q. Yes.

A. He called us all together there in front of the office.

Q. And at what time of day?

A. Oh, I'd say it was after quitting time, a little after five.

Q. Can you remember what month this was when they called you together?

A. No, I don't. It was about mid-summer. I don't remember the month. Seems to me like it must be along about September. I don't know. I wouldn't speak it.

Q. What did Pease say to the men at that time?

A. Well, he got us up there and he says, "Boys," he says, "I understand that you're trying to or-

(Testimony of Lindsay George Glenn.)

ganize here," or something like that. Well, that is what he said.

And he said, "I wanted to talk to all of you," and he says, he quoted, "I pay top wages and," he says, "I don't want no union here. What we want to make out of this is [234] something like a little family affair."

And he says, "I can't see what you want a union for, and pay out a dollar and a half a month or something like that."

I'm not going to swear that he made that exact statement—I'm getting a little ahead of myself, maybe, but he made that statement that very day, because, as I said, I used to go to work at 12:00 and get off at 8:00, you know, and anyway——

Q. The rest of the men worked from 8:00 in the morning until 5:00? A. Yes, sir.

Q. You were working from 12:00 until 8:00?

A. Yes, sir. I stayed there on that there.

Q. You were working on the filing job?

A. Yes, and getting the mill ready for the next morning, you see.

Q. And do you remember anything else that Pease said to all of the men there at that time?

A. No, except Lionel said that he didn't want no union.

Q. Did you have any further conversation with Pease individually that same day?

A. Yes. Lionel came in there as I stated, and he said he just wouldn't operate under a union. Lionel told me his own self. He says,——

(Testimony of Lindsay George Glenn.)

Q. Well, will you tell me exactly what the conversation was between yourself and Pease? Was anybody else present at the time? [235]

A. No. I was down there.

Q. You were working filing?

A. The men had all gone home.

Q. The men had all gone home?

A. Yes.

Well, we were just talking about the Union, and he says, "Glenn, before I would operate under the Union, under the contract, I'd shuf the god-damned thing down air tight," are the very exact words that Mr. Pease made to me.

Q. Were you in agreement or disagreement with him at that time about the Union?

A. Well, if you're talking about 1943 I was with him.

Q. 1942 you mean?

A. If you are talking in 1941 or '42, why, I wasn't for the Union in '42.

Q. And you and Pease agreed about the Union in this discussion you had?

A. We did in '42. At that time I didn't feel that we really did need a union. Lionel was different with us and there was quite a bit of difference in '42 and '43.

Q. Now, do you remember in 1943 you were working at the mill—was the mill operating steadily during 1943? A. No, it wasn't.

Q. Did you take some time off during March?

A. Yes, I lost some time.

(Testimony of Lindsay George Glenn.)

A. Well, the mill would break down, you know. That old conveyor chain, it had—it never would stay together. [236] we'd go down and start up of of a morning. If it wasn't that thing and sometimes it were out of logs.

Q. Now, do you remember an occasion when you asked for time off to make a trip?

A. To see my son?

Q. Yes. A. Yes, sir.

Q. When was that.

A. I must have asked Mr. Pease on about the 17th of March, I believe. I believe that was the date. I asked him to get off.

Q. And he let you off?

A. O. K. He says, "Sure."

Q. Where did you go?

A. I went to 'Frisco.

Q. For what purpose?

A. To see my boy who was in service.

Q. And about how long were you gone?

A. Approximately a week.

Q. Now, when you came back did you hear anything from the employees about a union?

A. Yes, I did.

Q. What did you hear?

A. Well, the boys first one and another come to me says she's gone union.

And I says, "It has?" Well, I says, "I'm always with the majority because I believe the majority is right." I says, "You boys know that. You boys know that I fought it," [237] but I says, "if you boys went union I'm a union man, too."

(Testimony of Lindsay George Glenn.)

Q. And did you sign up in the union at that time? A. I did.

Q. Do you recall the date when you signed up?

A. No. The date I can't; but it must undoubtedly be along about the 26th. I don't know. I don't remember. It was between—I'd say between the 20th and the 25th, maybe, I don't know; maybe a day or two later. [238]

Q. (By Mr. Jennings): Now, after you had signed this card did you have any conversation with Lionel Pease about the Union?

A. Not too much, but I said, "Well, Lionel," I said,—

Q. Well, where did the conversation take place?

A. Down there at the plant.

Q. And anybody else around there?

A. No. Lionel was there. I was coming up to the machine shop after something. Anyway, I was working in the mill, I believe, at that time. Anyway, I went into the machine shop.

Q. How long was it after you signed this card that you talked to Pease?

A. Perhaps the next day; I wouldn't say for sure. Next day or so.

Q. All right. What did you say and what did Pease say on this occasion?

A. Well, I says, "Lionel, she went Union while I was gone."

And he said, "No."

I said, "Yes, the majority of them signed up."

And I said, "I signed up," and when I said that

(Testimony of Lindsay George Glenn.)

he said, "Well, Glenn!" and that is the worst he said. And he stood there [239] a few minutes and he says, "Well, listen, they haven't signed a majority."

I says, "Yes, they have, Lionel."

He says, "They just told you a God-damned lie to get you to sign the card." He said, "Boyd Wyatt told you a god-damned lie to get you to sign."

And I said, "No, Lionel, that is not true." I says, "The majority has signed."

He says, "How do you know?"

I says, "I know because I have seen the cards," and I told him I had signed. That was at that very moment, that was about the end of that conversation.

Q. Now, after you came back and after you had had this conversation with Pease what job were you put on, after you came back from visiting your boy?

A. I believe that I worked on the chain a day and a half or two days, and then behind the edger.

Q. Behind the edger as a strip catcher?

A. Yes, sir; I think that is it.

Q. During the period of time that you worked at the Company, prior to the time when you joined the Union, had you worked behind the edger?

A. Some. As I stated, I never knew where my job was, you know.

Q. And you say you had worked some. Did you work steadily behind the edger?

A. I never did figure I had a steady job behind the edger before that, no, I didn't. [240]

(Testimony of Lindsay George Glenn.)

Q. What was the longest period of time that you had worked behind the edger up to the time you joined the union?

A. I wouldn't say that. I don't remember.

Q. Well, approximately?

A. Oh, maybe a couple of times a week, you know. A few times they'd be short handed and maybe the boy behind there, that is, Shorty,—I don't know the fellow's name behind there—but he had a habit of laying off quite a bit or once in a while, you know, and I'd always take his place, whoever was off.

Q. You filled in whenever anybody was off in the plant? A. What did you say?

Q. You say whenever people were off at the plant you filled in in their job? A. Yes.

Q. The strip catching job and the other jobs too, is that what you mean? A. Yes, sir.

Q. Now, after March 27, 1943, after you joined the Union, what job did you hold at the plant?

A. I was behind the edger.

Q. Any other job?

A. I might have worked on the green chain two days but my job was behind the edger.

Q. Had you ever had that job steadily before?

A. Behind the edger?

Q. Yes. [241]

A. No, I never had took it for a job. I never had it for a steady job.

Q. Had you ever discussed that job with Pease?

A. Well, yes. Behind the edger?

(Testimony of Lindsay George Glenn.)

Q. Yes.

A. Well, I had made the remark to Lionel that that was one job that I wouldn't take steady in the mill, that and tail sawing. But of course, if it was a few days until they could get somebody, I'd go anywhere, but there is two jobs that I won't take steady, and that was tail sawing was one, and behind the edger was the other.

Q. Prior to the time that you joined the Union had you had any conversation with Mr. Pease about Ira Ware? Do you remember any conversation?

A. Well, now, Lionel and I were talking once about Ware, and Lionel said to me, he said, "Well," something about Ware, "Well, I'm going to get rid of Ware," he said. "If the Union gets in," he said, "I couldn't get rid of him then so easy maybe." Now, that is what Mr. Pease told me.

Q. Now, after you—strike that. Before the time that you joined the Union, what was the relationship between yourself and Lionel Pease?

A. Well, I don't know. Lionel and I used to get over swell. We'd meet of a morning, stop and talk about the mill or something, or discuss one thing or another.

Q. How did he treat you insofar as jobs were concerned, extra work, and things of that sort?

A. Beg your pardon? [242]

Mr. Jennings: Would you read the question, please?

(Question read by the Reporter.)

(Testimony of Lindsay George Glenn.)

Q. What treatment did you receive from Lionel Pease before you joined the Union?

A. O.K. It was always all right. I was treated—couldn't have been treated better. You couldn't ask for any more, Q. K., he was all right.

Q. Now, after you signed the Union card was there any difference in the attitude Pease showed towards you or any difference in the treatment you received?

A. I would say that Lionel would even pass me and put his head down and not speak to me, so help me!

Q. Now, do you remember that some time after the Union started to organize the employees in 1943?

A. Yes, sir.

Q. And you have joined—Mr. Pease called the employees together in front of the office again?

A. Yes, sir.

Q. And were you present at the time he did that?

A. Yes, sir.

Q. Where was this second meeting held?

A. It was out there in front of the office.

Q. What time of day was this?

A. It was after working hours.

Q. And how many of the men were gathered there?

A. Practically all of them, I would say.

Q. Do you remember what Pease said to the men at that time? [243]

A. Yes. I don't know as I remember all of it, but he gathered us all up there, you know, made us

(Testimony of Lindsay George Glenn.)

another talk and told us, he says, "I'm going to raise wages and I'm going to grant seniority," and he says, "I don't see where the Union could do more or where you need a union."

Q. What else did he say?

A. Well, that is about all I know of at that time.

Q. Did he make any suggestions as to what he wanted the employees to do?

A. Did he make any suggestions for what?

Q. Did he suggest to the employees—

A. Well, I believe it was on that day, either that or the next one after that, that he had worked out a working agreement that he had made out himself that he wished we would appoint a committee to come in and look it over and see what they thought. I believe that is about the time that he said that; I wouldn't swear to it.

Q. It was either that day or a day or so later that he told you?

A. Somewheres near that date.

Q. He told you that he had some agreement worked out? A. Yes.

Q. And he wanted a committee appointed?

A. Yes, sir.

Q. Did the men choose a committee?

A. Well, I don't—yes, I believe we did.

Q. Or was it appointed by Lionel; do you remember?

A. I don't think the committee was appointed by Lionel; [244] no, it wasn't. I would say no.

(Testimony of Lindsay George Glenn.)

Q. And who were on the committee?

A. Jake Williams and Harry Major and myself.

Q. Now, did that committee have any conferences with Mr. Pease?

A. We did.

Q. And where were those conferences held?

A. In his office.

Q. And what did Mr. Pease say to the committee when you came into the office?

A. He says, "Boys," he says, "I've got a working agreement wrote out here that I want you to look at and see what you think." He says, "Now, here we start off with the sawyers," he says, "I'm going to raise them to a dollar sixty-five—" I believe was on it—well, I thought that is very good, and he said, "Well, I have a list of all the men, what rating, what each and every job was going to be," and I would say that it looked good and reported to all the men that it did.

Q. Your committee went out and reported to the men?

A. Yes, sir.

Q. That the wages were good?

A. Yes, sir.

Q. Was there anything in this document with regard to seniority?

A. I said to Lionel, "Lionel," I says, "that looks very good, but," I says, "you know, as you have heard before here," I says, "the boys are scrambling more about seniority, talking [245] more about seniority than anything else." He says, "Seniority is being granted," he says, "if we got

(Testimony of Lindsay George Glenn.)

a man here with a day's seniority over the other man," he says, "it's his job."

Well, then, I even spoke up myself.

"Well," I said, "that would mean, Lionel, ability wouldn't count?"

And he says, "Ability shall prevail."

Q. That is, if the man could do the job and he had seniority, why, he got the job?

A. That is right.

Trial Examiner Ward: Have you fixed the date? Do you remember the approximate date of this committee? One other witness has testified to a committee and I don't think the record shows the date.

Q. (By Mr. Jennings): Do you recall, Mr. Glenn, about how long after you returned from your trip to San Francisco, that this meeting was called, in which Pease talked to the men about the committee?

A. No, I can't name the date.

Q. Did he talk to the committee before the question of your getting the oiler job came up?

A. Did he talk to the committee before the oiling job came up?

Q. Yes.

A. Before I asked for it, is that the question?

Q. That is right, yes.

A. Well, the committee had already been informed, and as I stated, he stated there would be seniority in the plant. [246]

Mr. Jennings: And I think I can fix the time.

(Testimony of Lindsay George Glenn.)

Mr. Examiner, by reference to this other matter that came up.

Q. You remember that after this committee was formed and after Mr. Pease had said that seniority would prevail, the question of who should get the job of oiler came up? A. Yes, sir.

Q. And you say that the committee was already in existence at that time?

A. Yes. The committee had already been appointed.

Q. Yes. Now, who got the oiler job out there?

A. Christensen, George Christensen.

Q. Did you claim the job?

A. Beg pardon?

Q. Did you claim the job?

A. Yes, sir; I did claim the job.

Q. Upon what basis?

A. Well, I had more seniority than George. And, of course, they claimed I quit, but after all, Mr. Christensen quit and went off of the job.

Q. I don't want to get into that. You claimed it on the basis of seniority? A. Yes.

Trial Examiner Ward: Off the record.

(Remarks off the record.)

Trial Examiner Ward: On the record.

Q. You claimed that you were entitled to this oiler job because you claimed seniority over Christensen? A. Yes, sir. [247]

Q. Did you get the oiler job or did Christensen get it? A. I didn't get it.

Q. Now, after you didn't get the oiler job, do

(Testimony of Lindsay George Glenn.)

you recall an occasion when you asked Pease for permission to talk to the men about it?

A. I went down on Sunday—you said after I didn't get it?

Q. Well, when the job first came up, you knew Christensen was supposed to get it?

A. I said, "Mr. Norberg, will you go down and talk with me to Lionel?" I says, "I want to oil." Well, he says, "You should have it."

Well, I said, "You know that he has granted seniority. I believe I'll take that job."

He said, "If we had a day's seniority or had seniority over the other men we could have it."

That was on Sunday morning and I went down and talked with him and I said, "Lionel," I said, "You said we could have seniority here, didn't you?"

"Yes, sir."

"Well," I said, "there is a job here I would like to have. It's a better job than I've got and I'd like to have the oiling job," I said.

"Oh," he said, "Hell, Glenn, you can't get that oiling job. If you would get that," he said, "I would lose four or five men."

Mr. Norberg then spoke up and he said, "Lionel, you couldn't loose four or five men on account of that." He [248] says, "that is only granting seniority rights, that you promised."

He said, "Hell, they'd all leave if he is to take it."

(Testimony of Lindsay George Glenn.)

Q. Who were these men that were going to leave?

A. He said his Washington boys, I believe, he said four or five of them, the Washington boys.

Q. Was Christensen one of the men who had come down with Pease from Washington?

A. Yes, sir; I think he was.

Q. And there were four or five of them altogether who had come down with Pease from Washington?

A. Yes, sir.

Q. Then did you reach any agreement with Pease at that time that you were going to call a meeting of the men?

A. I said—He said, "Well, now," he says, "Glenn, I'll tell you," he says, "We'll leave that to a vote tomorrow evening," he said. "You stop all the men at the gate and we'll have a vote on it," and he said, "if the majority thinks that it's your job," he says, "it is."

That I done. I stopped at the gate and stopped the men and told them that evening that we were going to take a vote on it.

Q. And you discussed the matter with the men?

A. Yes. And we were going to vote to see if I should have the oiling job, naturally.

Q. Now, you remember that you talked to all of the men about this time. Now, I am just trying to fix the date. Now, you remember you talked to all the men about it in front of [249] the gate there?

A. Yes, sir.

Q. Now, do you remember whether that was the

(Testimony of Lindsay George Glenn.)

same day that Clayton Block was talking to the men? A. Yes, sir; it was.

The Witness: I remember of talking to all the men and stopping all the men at the gate.

Q. (By Mr. Jennings): Yes. Now, do you remember whether that was the date that Clayton Block also was talking to the men?

A. That was the same date but it was a little later.

Q. That is after you finished talking to them?

A. We wasn't finished, but I said to the boys,—naturally I told them all that day that Lionel said, and Harold Norberg did too, that I could have the oiling if it was [250] all right with the majority of the men that I should have it, and we were to put it to a vote, and I said, "Boys, all of you that feel that I'm qualified, why, we'll vote on it."

And Lionel said, "We won't do that," after telling us we could.

Q. Well, I don't want to get into all of that. What I am trying to get from you, Mr. Glenn, is whether or not this was the same day that Clayton Block was fired.

A. Well, I wouldn't say that. I will say that it was the same—that Block was there that very day, and he had his quitting slip or firing slip, or whatever you would call it, trying to get it adjusted that evening. That is all I know about that.

Q. That was the same evening, then?

A. Yes, sir.

Q. That you had this talk about the oiling job?

(Testimony of Lindsay George Glenn.)

A. Yes, sir.

Q. And the committee then was formed some time between this date——

A. It was formed——

Q. No, wait a minute now. The committee was formed some time between the date you joined the Union, which was March 27th, and the date that there was this meeting of all the men to talk about the oiler job with you, and Block's discharge; is that right?

A. I didn't quite understand that question.

(Question read.) [251]

A. That is right. The committee was already formed.

Q. Now, after you didn't get the the oiler job, did your activity in the union change in any respect?

A. Well, yes. I went to helping the boys get the cards signed up then.

Q. What did you do? Had you been active before that time?

A. Nothing only signing up myself.

Q. What did you do after you didn't get the oiling job?

A. I got a bunch of cards in my pocket and after the mill had shut down I went to first one house and the other and I got six that night and five the other, and we had 42 men on the payroll; I believe it was six and five; there was 40-some-odd men. I think, on the payroll and we had 33 or 34 cards to present.

(Testimony of Lindsay George Glenn.)

Q. Did you do anything more than sign up those 10 or 11 employees in the Union? That is, did you engage in any other activity for the Union?

A. Well, that is about all. I talked to some of the boys that were there and tried to convince them, or talk to them, reason with them where it wasn't really getting done right, and I didn't have much trouble getting them to sign. They all signed for me.

Q. Now, did you wear a Union button?

A. Did I what?

Q. Did you wear a Union button?

A. Yes, sir.

Q. Afterwards? [252]

A. Yes, sir. After I became a Union member I wore my button.

Q. And where did you wear it?

A. Well, maybe I wore it on my hat, or sometimes on my shirt.

Q. Who was the foreman at this time?

A. Higday, Herman Higday.

Q. Now, did you ever have any conversation with Higday in which he made some remark about your Union button or criticized your wearing it?

A. Yes, sir; I did.

Q. Do you remember when that was?

A. I don't remember the date, but it wasn't so very long before the election. Anyway, we was talking about unions and he said it wouldn't go union, and I said, "Yes, it will."

He says, "I'd like to bet you," and I said, "Well, you could get it called."

(Testimony of Lindsay George Glenn.)

"Well," he says, "Well, put your money up."

And I put my money up.

Q. What did you bet?

A. I bet two dollars.

Q. You bet two dollars with Higday and what was the bet?

A. I bet two dollars that it went Union by a certain date, and it didn't, and I paid off.

Q. You had to pay Higday?

A. I had to pay the bill. And we were talking about the button. I don't know whether you could really tell, with [253] these women here what he did say about it, but I'll put it this way: He said that God-damned button you got don't mean nothing, nothing but a damn fool would wear that any way.

I said, "Don't talk that way, Herman," and I said, "You could call me that, but my wife belongs to the union and she has to at Setzer's and you better not call her no damn fool."

And he said, "I'll pin that on—" he didn't say the seat of my *britches*, either—now, that is the truth.

Q. Now, you recall your previous testimony that after the end of March after you returned from down below you were working on the strip-catcher job regularly?

A. Most of the time, yes, sir.

Q. Can you describe that strip-catcher job for me? Tell me what the job is, what you are required to do?

(Testimony of Lindsay George Glenn.)

A. Yes, sir; a strip-catcher works behind the edger. The lumber and strips come out together on live rollers and one man stands on the right hand, the right-hand man, the strip catcher, and he is supposed to catch the strip and put them in the hog. If the hog was running he put *in* in, and if he wasn't, we had to put them in the conveyor down below.

Q. What does the other man do?

A. The man on the left?

Q. Yes.

A. He was supposed to—well, he was a lumber spotter, is the name of the job. He is a lumber spotter trimmer. [254]

Q. And is he to help the strip catcher when it's necessary?

A. Yes, he helps the strip catcher when he can.

Q. When you first worked on the strip catcher job was there any hog in operation?

A. They didn't use to be a hog there.

Q. And what did you do with strip when there was no hog?

A. All went in the conveyor.

Q. You threw them into the conveyor?

A. Yes, sir; well, now, that was this year, of course. Last year was a little bit different set-up. We had to throw them on bunks and truck it back in and get them and take them off, last year.

Q. But this year you either threw them on the conveyor belt, or you threw them in the hog?

A. Yes, sir.

(Testimony of Lindsay George Glenn.)

Q. And do you recall about when the hog was built?

A. ~~No, I can't.~~ I can't give you the date on that. I doubt if I even know the month it was. I don't remember.

Q. Was that some time this year?

A. Yes, sir.

Q. 1943? A. Yes, sir.

Q. Now, will you describe the hog for me?

A. The hog? Yes, sir.

Q. Yes, what was the nature of this hog?

A. The hog is to grind up slab and such as that for [255] fuel or waste that is no good, you know, and go on out to the burner.

Q. And there is a conveyor that leads up to the hog?

A. There is a conveyor, I'd say, between 25 and 40, maybe 50 feet long. I don't know the length of it. It's just a kind of a V-shaped, or just a trough, we'll call it, a rough trough that elevates up on about a 45-degree, or more.

Q. At a 45-degree or more angle, and it runs up?

A. Something like that; yes, sir. And the conveyor takes them right to the hog and the hog grinds them up and then they drop back down into the conveyor in dust or fine parts.

Q. And there is a chain that runs up this trough that carries the strip? A. Yes, sir.

Q. Now, after that hog was installed, what was your job? What were you required to do?

(Testimony of Lindsay George Glenn.)

Q. Why did Mr. Allan ask you who Mr. Cheney was?

A. Mr. Allan and I were talking. I made a suggestion. I said, "Mr. Allan, we ought to talk to Mr. Cheney about this job around here." I said, "There is some little things that could be corrected that would be different." That is my way of saying it. And I said, "I believe if a man would talk with him he might talk. You can't talk to Lionel." I said.

And he said, "Well," he said, "if you want to, we'll do that."

And I said, "Well, I think it would be an idea."

Q. Did Mr. Allan then talk to Mr. Cheney?

A. Yes. I pointed him out, and I said, "That is him;" I said, "let's have a meeting with Cheney and talk with him."

He said, "O. K."

Well, later on in the day I said, "Allan, I don't know. I don't guess there is any use of us talking to Mr. Cheney." I said, "After all, Lionel is the whole thing here," and I said, "I don't guess it would do any good." [265] And decided not to talk to Mr. Cheney.

Q. Now, had Mr. Allan gone to Mr. Cheney and arranged for a meeting? A. He had.

Q. And you decided to call it off? A. Yes.

Q. Now, did anything unusual happen on May the 20th?

A. That was the last day, wasn't it?

(Testimony of Lindsay George Glenn.)

Q. Yes.

A. No; except—no, nothing unusual about my job; no—there was too. The carrier broke down, if I remember—the carrier was broke down and our job was a little different on account of lumber being piled about 10 feet high behind us and nowhere to throw no strips or no nothing.

Q. Did you say that lumber was piled in back of you about 10 feet high?

A. Yes. We had lumber piled back there, I'll say eight anyway, 'way above our head.

Q. And what was the reason for the lumber being piled back there?

A. The carrier was broke down and they couldn't—we always put it on carts, you know,—and the carrier runs it out of our way.

Q. You couldn't do that?

A. No, we couldn't do that. The carrier was broke down. [266] You couldn't get rid of them so we had it just piled about, I'd say, 10 or 12 feet, something like that, and higher than our heads, 'way higher than our heads, very little working space in there that day. That made it a little unusual, we'll call it.

Q. You were pretty cramped working in there?

A. Beg pardon?

Q. You were cramped in there?

A. We didn't have good working room by a whole lot.

Q. Now, did Mr. Higday come around and talk

(Testimony of Lindsay George Glenn.)

A. The same thing I was required to; instead of putting the strip in there in the hog—in the conveyor, to put them into the hog, you see.

Q. In other words, you were not to throw them down below on the conveyor?

A. That is right. When the hog wasn't running but there was some numerous times even, the hog—when we first installed it, we couldn't get it to go because I'd pile my conveyor full and it would stop and stay there and the chain would just grind around them and I'd have the bottom full and there they were. [256]

Q. What did you do then?

A. I put them in the conveyor, some of them, but I wasn't warned very hard before that to keep them out of there; I was not—

Trial Examiner Ward: Just answer the question. We'll come to the warning later.

Q. (By Mr. Jennings): Now, were adjustments made in the hog so that you got it working well?

A. Yes, sir; they got it to working better.

Q. Now, had there been any difficulty with the chain on the conveyor? A. Yes, sir.

Q. During the period of time that you worked there? A. '42 and '43 both.

Q. What was the trouble?

A. Well, it would just break.

Q. Was it an old chain or a new chain?

A. Well, what I think was the trouble—it was running too high speed in the first place. In other

(Testimony of Lindsay George Glenn.)

words, they got it slowed down now. Well, they got a new chain in now and it would break sometimes as high as six or seven times a day.

Q. Then you'd have to stop the mill and repair it?

A. We'd have to stop the mill and repair it.

Q. Now, did the chain break after the hog was installed? — A. Yes, sir.

Q. And after you were throwing the strips up into the hog? [257] A. Yes, sir.

Q. Now, after the hog was installed, and was in good operation did you have,—or did you receive any specific instructions with regard to what you were to do with the strips? A. Yes, sir.

Q. What were those instructions?

A. Herman said, "Don't put them in the conveyor."

Q. And where did he tell you to throw them?

A. He said put them in the hog.

Q. Throw them up in the hog? A. Yes.

Q. And throw none of them in the conveyor?

A. Yes, sir.

Q. Now, after Herman Higday told you to do that, told you not to throw them in the conveyor, but to throw them in the hog, where did you throw them? A. I threw them in the hog.

Q. Did you throw any of them in the hog conveyor?

A. Yes, I did. I threw all of them in the hog conveyor.

(Testimony of Lindsay George Glenn.)

Q. Did you throw any of them in the conveyor?

A. I said if I can't get them out—he says, “You're not going to pass the buck on me—” I says, “Herman told me not to throw any more in there,” and I says, “I'll let them go through the planer before I will throw them in the hog.”

Q. Before you'll throw them in the conveyor, you mean?

A. Yes, I says, “You talk to somebody else because [258] I'm not going to throw them in there.”

Q. In fact, did you throw any strips on the conveyor belt after Higday gave you this warning?

A. Not after he give me the warning. He says, “Glenn, I ~~says~~ don't throw them in there. I'm not going to have them in there.”

I says, “What are you going to do with them?”

He says, “Don't put them in there.” He says, “Pile them in behind somewhere.”

I says, “O. K., them that I can get ahold of. If I can't put them in the hog,” I says, “I'll jerk them back here or let them go over the chain again,” and I told Earl what I had done.

Q. Well, did he say that was all right?

A. Anything but the hog, he said, anything but the bottom conveyor.

Q. Throw them anywhere except in the conveyor?

A. Then he come back after a while and he said there is some short ones going in there, and I said, “They drop in there from any size. They'll have to get in there. They got in there without even

(Testimony of Lindsay George Glenn.)

putting them in there," and I said, "I haven't put them in."

Q. Now, did you continue to work on this job up until the time you were fired?

A. Yes, sir.

Q. Did you, after you received this warning from Higday, receive any—hear from him any further about throwing the strips in the conveyor?

[259]

A. Yes, sir; about three or four times a day, more or less, he'd come and jump on me. I'd say, "Herman, I'm not doing that," and the last day before I was fired he come around there. He says, "By God, I said don't put them in there."

I says, "Herman, I'm not doing that."

He says, "There is the strip just went through."

I said, "You jump on that big son-of-a-gun. I'm not doing it."

Whom did you refer to as the big son-of-a-gun?

A. This fellow here.

Q. Mr. Allan? A. Yes, sir.

He says, "I'll get him. I'll get him."

I says, "Tell him about your troubles. Don't talk to me," and he didn't say a word to Mr. Allan. He just passed him on by.

Q. Did Higday seem interested in finding out whether or not you were throwing strips in the conveyor, did he watch?

A. He was around quite often, him and Lionel, both.

(Testimony of Lindsay George Glenn.)

Q. Now, did you ever throw any strips in the conveyor.

A. I wasn't throwing those strips in there at all.

Q. Did he ever accuse you of throwing strips in?

A. Yes, he accused me of it, and as I said, I said, "Jump on to that fellow over there." [260]

Q. Do you know whether or not Mr. Allan threw any strips into the conveyor?

A. The strips went into the conveyor on his side; yes, sir.

Q. Did Higday—did you ever hear Higday say anything to Allan about it? A. No, sir.

Q. Did Mr. Pease ever say anything to you about it?

A. Mr. Pease never did say one word to me about it.

Q. Did Mr. Cheney?

A. He came up there and stood one time around me about 10 minutes, and I throwed one up high there, and I said, "Watch, Lionel, they're liable to fall on you."

He says, "Don't think I'm not watching."

And that is really when I seen he was sore. I didn't even know it when he first came up there.

And I says, "Watch, Lionel, they might jump out."

And he said, "Don't think I'm not watching."
That is just what he said to me.

Q. Now, you recall that during this period of time there was some sentiment, some discussion among the men about the Union in the plant?

(Testimony of Lindsay George Glenn.)

A. Yes; there was.

Q. And what position were you taking with regard to the Union? [261]

A. Well, I leant to the Union, of course. We discussed it among each other and would say, "Well, have you seen him, to see if he'd sign?" or something like that, you know.

Well, they more or less had asked me to go around and see them.

Well, I said, as far as caring to ask a man to join a union I'd just as soon as Lionel Pease or Cheney, either one.

Q. Now, was there any group of men out there who were opposed to the Union?

A. Who were opposed to it?

Q. Yes.

A. Yes, sir; there was some who were opposed to it.

Q. And what was your relationship with those men? Were they friendly towards you or otherwise?

A. God, no! They'd criticize me hard.

Q. In what respect would they criticize you?

A. Well, as I stated a minute ago, as far as that goes, they'd say nothing but a damn fool would want to belong to it, pay your money out for nothing, or something like that. But the big sawyer out there was one. He said nothing but a damn fool would want any union.

Q. What was his name, do you remember?

A. I don't know what the sawyer's name is.

(Testimony of Lindsay George Glenn.)

Q. Was it Mr. Manning? A. That is it. [262]

Q. Now, did you have any argument with the men out there other than about the Union?

A. Yes; we were discussing it always.

Q. Now, you remember that an election was held out at the plant on May the 22nd, 1943.

A. Do I remember the day of the election?

Q. You remember that the election was held?

A. Yes, sir; I remember when it was held.

Q. It was a Saturday? A. Yes, sir.

Q. And you recall that prior to the date of that election you had some conversation with Boyd Wyatt? A. Yes, sir.

Q. About representing the Union?

A. Yes, sir.

Q. And what did Wyatt tell you?

A. Well, he said he wanted me to act out there on that vote counting and challenge the votes to see if they were eligible.

Q. You were to act as the Union observer in the election? A. Yes, sir.

Q. Do you recall when you were informed that you were to be the Union observer? How long before the election?

A. No; but it was some few days before.

Q. Now, do you remember notices of election were posted? [263]

A. They were posted on the building, yes.

Q. And how long before the election was it that the notices were put up?

(Testimony of Lindsay George Glenn.)

A. Some three or four days I would say, two, or three or four days; something like that. I don't know just how many days. I don't remember.

Q. Now, calling your attention to the 20th of May, as I recall your testimony, that was the last day you worked? A. Yes, sir.

Q. On that day was there any difference in the job that you had been doing? Was there any change in the job or was it just the same job that had been there all the time?

A. I was on the same job that I had been holding there.

Q. You were working as a strip catcher?

A. Yes, sir.

Q. Were you doing your job as usual on that day? A. Yes, sir.

Q. Now, had there been some discussion between you and Mr. Allan, also on the strip catcher job, about the job there? A. About the job?

Q. Yes.

A. Oh, perhaps we talked about the job as men do on any job.

Q. Now, do you remember on that day that you saw Mr. [264] Cheney around the mill. Ben Cheney?

A. Yes, sir; I remember Mr. Cheney.

Q. And did Mr. Allan ask you who Mr. Cheney was, do you remember that?

A. Well, I guess he did. He didn't know Mr. Cheney. I pointed and showed him Mr. Cheney when he come around.

(Testimony of Lindsay George Glenn.)

to you about the strips on the last day that you worked? A. Yes, sir.

Q. What did he say?

A. He'd say, "Glenn," he'd say, "don't throw them strips in there." He came to me as many as three times, I'd say.

"Herman, I'm not throwing those strips in there," and the last time he comes to me, he just said, "By God, I said don't throw no strips in there," he said.

"I'm not throwing no strips in there," I says.

He says, "I've been out there watching you."

I said, "Jump onto that fellow over there," I says. "I'm not the only one here," I says, "you jump on him. Tell him your troubles." I said, "Herman, I'm not throwing no strips in there." And he says, "I'll get him," but he never did speak to Mr. Allan. [267]

Q. Did Mr. Pease say anything to you about the strips on May the 20th, the last day you worked?

A. Mr. Pease did not say one word. He came up there and stood for some five minutes, maybe a little more, as I stated a minute ago, and I said, "Lionel, one of them is liable to bit you."

I says, "Watch the strips."

He says, "Don't think I'm not watching."

He didn't say one word to me.

Q. Did Mr. Cheney say anything to you?

A. Mr. Cheney ~~didn't~~ say nothing to me.

(Testimony of Lindsay George Glenn.)

Q. Now, after you finished work on May the 20th, did you check out as usual?

A. Same thing.

Q. Did Mr. Pease, Mr. Higday or Mr. Cheney say anything to you before you left that night?

A. No, sir.

Q. Did you return to work as usual on the morning of May 21st, the day before the election?

A. I did.

Q. And did you go to work? A. No, sir.

Q. Why not?

A. Well, I started up to my job, you know. We blow a five minute whistle there, and I started over there and [268] Herman said, "Pease wants to see you down at the office."

Q. You went over to the office?

A. I went out there to the office and sit around out there in front of the office until he came down some thirty minutes later.

Q. Did Pease talk to you at that time then?

A. Yes, sir. He talked to us at that time.

Q. Do you remember what he said?

A. No, perhaps not exact words.

I think I asked him, I said, "Lionel, what is the matter?"

Well, in other words he brought it to where we wasn't working. Of course, just what words I don't remember.

Q. He said you weren't working there anymore?

A. Yes, sure.

(Testimony of Lindsay George Glenn.)

Q. Now, after you found that out, did anything more happen that morning? A. Yes.

Q. What happened?

A. Well, we was there talking and someone went to Harold Norberg and told him, told him they fired Glenn and Allan and Harold Norberg come up there and Harold said, "Lionel, what did you fire him for? What are you firing Glenn for?" And Lionel—I don't know—he said, "I'm had Glenn [269] on every job in the sawmill," and he says, "there's not one job can he do."

Now, the conversation as to whether he said directly while Harold was there, or he might have waited until a few more of them gathered up, but that is what he told them he was firing me for.

Q. A number of the other men gathered around?

A. Every man come out there and Harold told them after they all got there, and he said, "Well, we'll just shut the whole thing down."

Harold says, "If you're going to fire him," he says, "you're not going to fire him or we'll all walk out," and they did, and they discussed it around there some 30 minutes and I said, "Now, listen, boys, this is nothing." I said, "We shouldn't stop production. You boys all go back on your job because there is a different way of settling this than the whole bunch walking out."

Q. Did you tell them what other way there was?

A. No, I didn't speak it up then.

Q. What way did you have in mind?

(Testimony of Lindsay George Glenn.)

A. Certainly I had to follow Mr. Wyatt to see what he could do with it. I had on my mind to talk to Mr. Boyd Wyatt to see what could be done.

Q. What happened then next?

A. What happened next? [270]

Q. Yes. A. Well,—

Q. Did they stay out or did they go back?

A. They went back, all I believe, except there was some three, maybe four that said they would never go back until he put me back and I believe there was three quit and I could swear two.

Q. Were these men that quit Union men or were they non-union?

A. They were Union men because they signed the cards.

Q. Now, you said that almost all of the men left the mill and came out there?

A. All but I'd say four or five, maybe six, gathered up there and Mr. Manning didn't, and, well, just one man on the street. I don't know all their names, but there was four or five, something like that.

Q. Four or five men stayed on their jobs?

A. That is true.

Q. Including, you said, Manning?

A. Yes, sir.

Q. Were the men that stayed in the mill, were they Union or non-Union?

A. They were non-Union. Some of them were, that is, there wasn't all AFL members. We know that. They were non-Union. [271]

(Testimony of Lindsay George Glenn.)

Q. Now, did you receive a termination slip from Mr. Pease? A. Yes, sir.

Q. On that day or the following day?

A. That day or the next.

Q. Have you that slip?

A. No, I haven't, but it's just exactly like Mr. Allan's. It says, "Voluntarily quit."

Q. Was that the slip Mr. Pease gave you?

A. Yes, sir.

Q. Was that true? Did you quit?

A. No, sir; why, no. I didn't quit. I quit because they stopped my pay.

Q. You mean you were fired?

A. I was fired. I offered to go back to work and asked them and tried to reason.

I said, "I can't see why you fire me. I'm always the first man on your job on repairs," and I can prove that by two-thirds of every man there yet.

Q. And what did Pease say?

A. Well, I don't know just exactly. Anyway, he wouldn't reinstate me.

Q. Now, during the period before you were fired, were you making any unusual effort to stay at work? A. Stay on my job? [272]

Q. Yes.

A. Boy, I was exerting every ounce in me.

Q. For what reason?

A. Well, I was expecting what I got, maybe. I knew that Lionel was bitterly opposed to the Union, how well I knew it! And I knew that if he got a chance I might get fired and I was trying to exert

(Testimony of Lindsay George Glenn.)

myself to stay until after the election anyway, and I had always heard that Mr. McClure was going to be there and I felt that——

Q. Who is he?

A. He is the foreman that was down there. I think that is his name. And I thought that I could work for him anywhere, and I was exerting myself to hold my job.

Q. You were fired then before the consent election took place? A. Before the election.

Q. Yes. A. Yes, sir; the day before.

Q. Did you act as the Union's observer in the election, even though you had been fired?

A. Yes, sir.

Q. Did you vote in the election?

A. Yes, sir; I voted a challenged vote.

Q. That vote hasn't been counted?

A. It hasn't. [273]

UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 10787

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

CHENEY CALIFORNIA LUMBER COMPANY, RESPONDENT

Proceedings had in the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt From Proceedings of Monday, March 26, 1945

Before GARRECHT, MATHEWS, and HEALY, Circuit Judges

Order of submission

Ordered petition to review argued by Mr. John Jennings, Regional Attorney, National Labor Relations Board, counsel for petitioner, and by Mr. Chaffee Hall, counsel for respondent, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt From Proceedings of Saturday, March 31, 1945

Before GARRECHT, MATHEWS, and HEALY, Circuit Judges

Order directing filing of opinion and filing and recording of decree

By direction of the Court, ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the opinion rendered.

United States Circuit Court of Appeals for the Ninth Circuit

No. 10787. March 31, 1945

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

CHENEY CALIFORNIA LUMBER COMPANY, RESPONDENT

Petition for enforcement of an order of the National Labor Relations Board

Before GARRECHT, MATHEWS, and HEALY, Circuit Judges

PER CURIAM. The order of petitioner, the National Labor Relations Board, against respondent, Cheney California Lumber Company, dated December 30, 1943, will be modified by inserting the word "discriminatorily" between the word "by" and the word "discharging" in paragraph 1 (a) of the order; by striking out all of paragraph 1 (b);¹ by adding to paragraph 2 (b) a proviso to the effect that, as used in that paragraph, the term "loss" means loss actually incurred, and the term "net earnings" includes those which the employee could have earned, but has, without excuse, failed to earn;² by striking from paragraph 2 (c) all references to paragraph 1 (b); and by amending paragraph 2 (d) so that, instead of requiring notice to be given to the Board's regional director within 10 days from the date of the order, it will require such notice to be given within 10 days from the date on which our decree becomes final.³

As thus modified, the order will be enforced.

[Endorsed:] Opinion. Filed March 31, 1945. Paul P. O'Brien, Clerk.

¹ Cf. National Labor Relations Board v. Express Pub. Co., 312 U. S. 426, 432-438; National Labor Relations Board v. Mason Mfg. Co., 9 Cir., 126 F. (2d) 819, 814; National Labor Relations Board v. Walt Disney Productions, 9 Cir., 146 F. (2d) 44, 50; National Labor Relations Board v. Cowell Portland Cement Co., 9 Cir., — F. (2d) —.

² Cf. National Labor Relations Board v. Cowell Portland Cement Co., supra.

³ Cf. National Labor Relations Board v. Register Pub. Co., 9 Cir., 141 F. (2d) 150, 163; National Labor Relations Board v. Cowell Portland Cement Co., supra.

United States Circuit Court of Appeals for the Ninth Circuit

No. 10787

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

CHENEY CALIFORNIA LUMBER COMPANY, RESPONDENT

Decree

Upon consideration of the petition of the National Labor Relations Board herein, filed May 29, 1944 for enforcement of its order of December 30, 1943 in this proceedings, and of the transcript of record in this cause, brief filed and oral arguments made by counsel for the respective parties, and good cause therefor appearing

It is ordered, adjudged and decreed that said order be modified, and as modified be enforced, and that the respondent Cheney California Lumber Company, Greenville, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Lumber and Sawmill Workers Local 2647, affiliated with the American Federation of Labor, or in any other labor organization of its employees, by discriminatorily discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of their employment;

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer Clayton Block, Ira Ware, Leslie Allan, and Lindsay Glenn immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges;

(b) Make whole Clayton Block/Ira Ware, Leslie Allan, and Lindsay Glenn for any loss of pay they have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during said period; provided that as used in this paragraph, the term "loss" means loss actually incurred, and the term "net earnings" includes those which the employee could have earned, but has, without excuse, failed to earn;

(c) Post immediately in conspicuous places in and about its sawmill plant located at Greenville, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 (a) of this Decree; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Decree; and (3) that the respondent's employees are free to become and remain members of Lumber and Sawmill Workers Local 2647, affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of his membership or activity in that or any other labor organization;

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of the issuance of this decree, what steps the respondent has taken to comply herewith.

[Endorsed.]. Filed March 31, 1945, Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt From Proceedings of Monday, May 14, 1945

Before GARRECHT, MATHEWS, and HEALY, Circuit Judges

Order denying petition for rehearing

Upon consideration thereof, and by direction of the Court, it is ordered that the petition of National Labor Relations Board, filed April 17, 1945, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

United States Circuit Court of Appeals for the Ninth Circuit

(Title of Cause and Number.)

Certificate of Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit, to record certified under rule 28 of the revised rules of the Supreme Court of the United States

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing 347 pages, numbered from and including 1 to and including 347, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant

to request of counsel for the petitioner, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 26th day of July 1945.

[SEAL]

(S) PAUL P. O'BRIEN, *Clerk*.

Supreme Court of the United States

Order allowing certiorari

Filed October 22, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted:

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice JACKSON took no part in the consideration or decision of this application.

FILE COPY

U.S. - Supreme Court, U. S.
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CLERK

No. 829

In the Supreme Court of the United States.

OCTOBER TERM, 1945

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

CHENEY CALIFORNIA LUMBER COMPANY

PETITION FOR A WRIT OF HABEAS CORPUS TO THE UNITED
STATES DISTRICT COURT OF APPEALS FOR THE NINTH
CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 319

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

CHENEY CALIFORNIA LUMBER COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Ninth Circuit, entered on March 31, 1945 (R. 350),¹ to the extent that it modifies the Board's order directed against the Cheney California Lumber Company.

OPINIONS BELOW

The *per curiam* opinion of the Circuit Court of Appeals (R. 349) is reported in 149 F. 2d 333. The findings of fact, conclusions of law, and order of the Board (R. 10-51) are reported in 54 N. L. R. B. 205.

¹ "R. I" denotes references to the "Transcript of Record" and "R. II" to the "Supplemental Transcript of Record."

JURISDICTION

The decree of the Circuit Court of Appeals was entered on March 31, 1945 (R. 350). A petition for rehearing filed by the Board was denied on May 14, 1945 (R. 351). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. When an employer violates Section 8 (1) and (3) of the National Labor Relations Act by discriminatorily discharging four employees and violates Section 8 (1) of the Act by repeated and varied threats of economic reprisal for union activity and by granting economic benefits in return for abandonment of the union, may the Board properly enter an order which not only requires the employer to cease and desist from discrimination but also to cease and desist from "in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act."

2. Whether the circuit court of appeals may properly modify a back-pay award by providing for the deduction of amounts which the recipient could have earned, but did not, where the employer had not raised this issue before the Board and did not offer in court to show that any recipient had thus wilfully incurred losses of wages.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151 *et seq.*) are set out in the Appendix, pp. 25-27, *infra*.

STATEMENT

Upon the usual proceedings, the Board on December 30, 1943, issued its findings of fact, conclusions of law, and order (R. I 10-51). The pertinent facts, as found by the Board and shown by the evidence, may be summarized as follows:²

The Company's employees became interested in unionization in the early fall of 1942, a few months after the Company began to operate the Greenville, California, sawmill (R. I 17; 60-61, 115, 126-127). In September of that year, approximately 17 or 18 mill employees signed application cards for membership in Lumber and Sawmill Workers, Local 4726, affiliated with the

² In the following statement references preceding a semi-colon are to the Board's findings; those following are to the supporting evidence.

American Federation of Labor, hereinafter referred to as the Union (R. I 17; 126-127, 135).

On or about September 20, 1942, Pease, the general manager of the mill, called a meeting of all employees and urged them not to join a union (R. I 17-18; 127, 135-136, R. II 272-273, 311-312). Pease advised the group that some of the employees would suffer a loss of wages if the men joined the Union and a union scale were adopted (R. I 18; 127, 136, R. II 272-273). After the meeting two employees asked Pease why he was opposed to the Union. Pease told one that he did not "want a * * * thing to do with [unions]" (R. I 18-19; 128-129). The other reminded Pease that he was violating the employees' rights, and Pease replied that he did not "care much" what he was doing (R. I 20; R. II 281-282). Pease also told employee Glenn who was then opposed to the Union, "Glenn, before I would operate under the Union, under the contract, I'd shut the * * * thing down air tight" (R. I 19-20; R. II 313).

Sometime before the seasonal shut-down of the mill in December 1942,³ Pease called a second meeting of the employees (R. I 20-21; R. II 273, 319-320), where the employees decided that their main objective in organizing was seniority (R. I 20-21; R. II 273-274). Pease thereupon told

³ Because of unsuitable weather the sawmill practically shuts down each season from about December to March (R. I 87-88, R. II 279).

the men that he would grant them seniority rights and asked that a committee of three employees be appointed to "decide which ones should have seniority" and "which ones should have certain jobs" (R. I 20-21; R. II 273-274, 319-320). The men in return informed Pease that they would "just drop the case of the Union" (R. I 20-21; R. II 273-274). The employees appointed a seniority committee which thereafter conferred with Pease (R. I 21; R. II 274, 320-321). Pease submitted to the committee a working agreement which was accepted by the men (R. I 21; 166, R. II 321-322). The employees thereupon abandoned their attempts to achieve self-organization and ceased discussing the Union (R. I 22; 129, 136-137).

When the union movement was revived at the mill in the spring of 1943 (R. I 22, 25; 67-68, 81-83, 143-144, 146-147), employees Ware, Block, and Norberg were among its most outspoken advocates (R. I 25; 68, 96-98, 143-145). Shortly before March 18, 1943 (see R. I 152-153, 157, R. II 289), Foreman Higday accused Norberg, Ware, and Block of "trying to cause trouble" by bringing "the Union in" and advised them to "go some other place" if they "didn't like where [they were] working" (R. I 25-26; 143-144, 146-148.) A day or so after this discussion Pease called Norberg to his office and warned him that he, Block, and Ware were "talking too much,"

that he was going to dismiss Block and Ware, and that if Norberg did not "stop talking too much about things," he would have to dismiss Norberg also (R. I 26; 144-145, 148-149, 153). Thereafter, Pease told Norberg's brother that Norberg, Ware, and Block were "doing too much talking," that Ware was "stirring up too much trouble trying to get the men organized," that he was going to discharge Block and Ware, and that he would discharge Norberg if he "didn't quit talking so much" (R. I 26; R. II 269-272).

On March 24 and 25, a majority of the employees signed applications for membership in the Union (R. I 22; 67-68, 82-84). The union organizer advised Pease of this fact and asked him to negotiate a contract with the Union (R. I 22; 69-71, 83-85, R. II 285). Pease challenged the Union's majority and suggested that the Board conduct an election (R. I 22-23; 70-71, 84-86, R. II 285), but threatened to close the mill before permitting it to "go Union" (R. I 22-23; 70, 85).

After the Union filed a petition for investigation and certification of representatives pursuant to Section 9 of the Act, the Company agreed to have a consent election conducted at the mill on June 2 (R. I 24; 73-75, 79, 191-192, 208). On account of protests by Allan and other employees,

When Ware and Block first returned to work after this announcement, Pease discharged them (R. I 28, 31; 101-106, 153-158). These discharges, which the Board found were discriminatory (R. I 29, 32, 45), are discussed, *infra*, pp. 8-9.

the date of the election was, however, advanced to May 22 (R. I 24, 38; 79-81, 91, 191-192, 208-210). On the eve of the election the Company discharged employees Allan and Glenn⁵ (R. I 24, 39; 196-200, R. II 343-347). Glenn and Allan voted in the election, but their eligibility was challenged by the Company on the ground that they had been discharged for cause (R. I 24, 39; 76-77, 200-201, 257-260, R. II 347), and consequently their votes were segregated and were not counted (R. I 24; 77, 201, 257-260, R. II 347). Without these votes, which were conceded to be in favor of the Union (R. I 259-260), the tally was 16 for the Union and 16 against it (R. I 24; 77, 258).⁶

The Board found that by the anti-union statements and activities of General Manager Pease

⁵ These discharges, which the Board found were discriminatory (R. I 41, 45), are discussed, *infra*, pp. 9-10.

⁶ The challenged ballots remained unopened pending a decision by the Board in the instant case. After the Board issued its decision in the instant case finding that Allan and Glenn had been discriminatorily discharged (*infra*, pp. 9-10), the regional director on January 4, 1944 opened the challenged ballots, which were for the Union, counted them, and on February 11, 1944 issued a Consent Determination of Representatives deciding that the Union was the exclusive representative of all the employees in the agreed unit. Thereafter, the Company refused to bargain collectively with the Union, charges of violation of Section 8 (1) and (5) were filed with the Board, a new complaint based thereon issued, and on July 10, 1945 the Board issued its decision finding that the Company had violated Section 8 (1) and (5) of the Act and ordering the Company to bargain with the Union. *Matter of Cheney California Lumber Co.*, 62 N. L. R. B., No. 160.

and Foreman Higday the Company interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (1) (R. I 45, 47-48).

Ware had been a member of the American Federation of Labor for about 3½ years, and he regularly wore a union button while working at Cheney (R. I 30; 96-97). Ware and Block were in the forefront of the movement to revive the Union at the mill (*supra*, p. 5). Block joined the Union on March 24, 1943 (R. I 27; 68, R. II 290-291), and Ware signed another designation card for the Union on that date and aided the Union organizer in signing up other employees (R. I 30; 68, 97-98). By their organizational activities Ware and Block incurred the enmity of Foreman Higday and General Manager Pease, and the latter stated to Norberg and his brother his intention to discharge Ware and Block for their union activities (*supra*, pp. 5-6). Immediately upon their return to work after this announcement, Ware and Block were discharged by Pease (R. I 28, 31; 101-106, 153-158). There is, as the Board found, no evidence in the record to support the reasons assigned by the Company for the discharges of Ware and Block (R. I 28-29, 31-32). The Board found that the Company discharged both Ware and Block because they had engaged in union activities (R. I 29, 32) and that the Company thereby discouraged membership in

the Union in violation of Section 8 (3) and (1) of the Act (R. I 45, 47-48).

Allan was a member of the United Brotherhood of Carpenters and Joiners when he was hired by Cheney and informed Pease of that fact when he reported for work (R. I 36, 38; 179, 187). On April 15, Allan signed a membership application in the Union and thereafter solicited on its behalf (R. I 38; 187-190). Glenn joined the Union on March 27, 1943 (R. I 34; 160, R. II 314-315), and informed Pease of that fact (R. I 34-35; R. II 315-316). Thereafter, Pease who had formerly been friendly to Glenn, would pass him without speaking (R. I 35; R. II 318-319). Glenn solicited on behalf of the Union and succeeded in signing up 11 employees (R. I 35; R. II 327-328). He also wore his union button, and Foreman Higday maligned him for doing so (R. I 35-36; R. II 328, 329). On May 19, the agreement for holding a consent election was signed, and at Allan's request, the time for holding the election was advanced to May 22 (*supra*, pp. 6-7). At this time also, Glenn was appointed the Union's observer in the forthcoming election (R. I 24, 36; 75). On May 21, Allan and Glenn were discharged (R. I 39; 196-197, R. II 343). The termination slips issued to them on May 21 or 22 stated falsely that they had "left voluntarily" (R. I 39; 198-200, R. II 346). The Board found that the Company discharged both Glenn and Allan because of their union activities

— and in order to influence adversely the election held by the Board to determine the bargaining representative of the Company's employees (R. I 41), and that the Company thereby discouraged membership in the Union in violation of Section 8 (3) and (1) of the Act (R. I 45, 47-48).

The Board ordered the Company to "1. Cease and desist from: (a) discouraging membership in Lumber and Sawmill Workers Local 2647, affiliated with the American Federation of Labor, or in any other labor organization of its employees by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of their employment; (b) in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act." 2. Take the following affirmative action: (a) offer immediate and full reinstatement to the four employees; (b) "Make whole [the four employees] for any loss of pay they have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages

from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during said period"; (c) post notices; (d) notify the Regional Director for the Twentieth Region what steps the Company has taken to comply with the Board's order (R. I 11-13).

On May 20, 1944, the Board petitioned the court below for enforcement of its order (R. I 51-55). The Company having failed to appear in the court below, the Board on February 10, 1945, moved the court below to enter a decree enforcing its order. On March 26, 1945, the Company answered the Board's motion, by proposing certain amendments to the form of decree submitted by the Board. Among the modifications proposed by Cheney were the deletion of paragraph 1 (b) of the Board's order and the addition to paragraph 2 (b) of a proviso "to the effect that, as used in that paragraph, the term 'loss' means loss actually incurred, and the term 'net earnings' includes those which the employee could have earned, but has, without excuse, failed to earn." This issue had not been raised before the Board at any time. The Company in court made no allegation that any employee had failed without excuse to earn during the period of his discriminatory discharge, but merely asked the court to modify the Board's order in that respect. On March 31, 1945, the court below handed down its *per curiam* opinion and entered a decree modifying the

Board's order *inter alia* by striking out all of paragraph 1 (b), by adding to paragraph 2 (b) the words "provided that, as used in this paragraph, the term 'loss' means loss actually incurred, and the term 'net earnings' includes those which the employee could have earned, but has, without excuse, failed to earn," and by striking from paragraph 2 (c) all references to paragraph 1 (b), and enforcing the Board's order as modified (R. 350).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the Board had no power in the circumstances of this case to enter an order in terms which required the Company to cease and desist from "in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act."

2. In holding that the Board could not enter a back-pay order which did not in terms limit the employee's recovery of back pay to the amount of the losses which he actually incurred, and in including within deductible net earnings such

earnings as the employee could have earned, but has without excuse failed to earn.

3. In entertaining the issue of the deductibility of earnings which the employee could have earned, but has without excuse failed to earn, when that issue was not raised before the Board at any time and no extraordinary circumstances appear to excuse the failure to raise the issue before the Board.

4. In refusing to enforce, and in modifying or setting aside, paragraphs 1 (b), 2 (b), and 2 (c) of the Board's order.

REASONS FOR GRANTING THE WRIT

I

1. In concluding that paragraph 1 (b) should be stricken from the Board's order, the court below misinterpreted this Court's holding in *National Labor Relations Board v. Express Publishing Co.*, 312 U. S. 426, 432-438, and reached a result which is in direct conflict with that decision, other decisions of this Court, and decisions of other circuit courts of appeals, including *National Labor Relations Board v. May Department Stores*, 146 F. 2d 66, 71 (C. C. A. 8), certiorari granted, No. 39, October Term, 1945.

In the *Express Publishing* case the Circuit Court of Appeals for the Fifth Circuit had deleted a cease and desist provision virtually identical with paragraph 1 (b) of the Board's order in the instant case (312 U. S. at 430). This Court restored only the portion of the deleted provision

pertaining to collective bargaining, since in that case the only unfair labor practice found by the Board had been a refusal to bargain and the Board had "made no finding based either on the specific circumstances disclosed by the record or on its own expert judgment [as to the] relation [of a refusal to bargain] to the policy embodied in § 7, or * * * [to] the other types of unfair practices some of which are enumerated in § 8" (312 U. S. at 434-435, 437-439). The part of the cease and desist order which this Court reinstated required the employer to cease and desist from "In any manner interfering with the efforts of the [union] to bargain collectively with the [employer]" (312 U. S. at 438-439).

Under the principles announced by this Court in the *Express Publishing* decision, paragraph 1 (b) of the Board's order in this case should have been enforced in full, in view of the Company's numerous and persistent acts in violation of the Act. For the *Express Publishing* opinion states: "Having found the acts which constitute the unfair labor practice the Board is free to restrain the practice and other like or related unlawful acts. * * * The breadth of the order, like the injunction of a court, must depend upon the circumstances of each case, the purpose being to prevent violations, the threat of which in the future is indicated because of their similarity or relation to those unlawful acts which the Board has found to have been committed by the employer in the

past" (312 U. S. at 436-437). Other cases in which this Court had enforced broad cease and desist orders were distinguished in the *Express Publishing* opinion on the ground that such orders were justified in those cases because "the record disclosed persistent attempts by varying methods to interfere with the right of self-organization in circumstances from which the Board or the court found or could have found the threat of continuing and varying efforts to attain the same end in the future" (312 U. S. at 437-438).

A cease and desist order in the terms of paragraph 1 (b) of the instant order is particularly appropriate where, as in the instant case, an employer has not only violated Section 8 (1) by acts of interference, restraint, and coercion, but has also violated Section 8 (1) and 8 (3) by discouraging union membership and activity by discriminatorily discharging some of its employees. The latter offense "goes to the very heart of the Act" (*National Labor Relations Board v. Entwistle Mfg. Co.*, 120 F. 2d 532, 536 (C. C. A. 4)) and warrants the broad injunctive order as "probably the primary wrong against which section 8 (1) * * * was directed." *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. 2d 862, 869 (C. C. A. 2), certiorari denied, 304 U. S. 576, 585. The Senate Committee which reported the National Labor Relations Act recognized that "if the right to be free from employer interference in self organiza-

tion or to join or refrain from joining a labor organization is to have any practical meaning, it must be accompanied by assurance that its exercise will not result in discriminatory treatment or loss of the opportunity for work." S. Rep. No. 573, 74th Cong., 1st Sess., p. 11. With respect to a discriminatory refusal to hire union members, in violation of Section 8 (3) of the Act, this Court noted that: "The effect of such discrimination is not confined to the actual denial of employment; it inevitably operates against the whole idea of the legitimacy of organization." *Phelps Dodge Corp. v. National Labor Relations Board*, 313 U. S. 177, 185.

In the instant case the Board's order contained only two cease and desist provisions—one prohibiting merely future violations of Section 8 (3) and the other prohibiting future violations of Section 8 (1). By striking the provision directed at violations of Section 8 (1), the court below, therefore, deleted all of the prohibitory provisions as to those 8 (1) violations which were not related to discrimination with respect to hire and tenure of employment. Consequently, the court below not only failed to follow the *Express Publishing* case (312 U. S. at 436-438), by prohibiting future violations of the Act related to past violations and reasonably foreseeable therefrom, but also failed to prohibit future violations identical to those of which the Board and the court had just found the Company

guilty. Thereby the court eliminated the cease and desist provision which the Act *requires* the Board to include in its order—namely, one directed to unfair labor practices of which the employer has been found guilty. See *National Labor Relations Act*, Section 10 (c); *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265; *Express Publishing case*, *supra*, at 432.

2. Since its decision in the *Express Publishing* case, this Court has enforced cease and desist orders identical with the one here involved where, as in the instant case, the Board found that the employer had engaged in conduct interfering with, restraining, or coercing employees in the exercise of their right to self-organization. See *National Labor Relations Board v. Automatic Maintenance Machinery Co.*, 315 U. S. 282, enforcing 13 N. L. R. B. 338, 362 (involving violations of Section 8 (1), (2), (3), and (5)); *National Labor Relations Board v. Electric Vacuum Cleaner Co.*, 315 U. S. 685, enforcing 18 N. L. R. B. 591, 640 (involving violations of Section 8 (1) and (3)); *National Labor Relations Board v. Nevada Consolidated Copper Corp.*, 316 U. S. 105, enforcing 26 N. L. R. B. 1182, 1235 (involving violations of Section 8 (1) and (3)). The Circuit Courts of Appeals for the First, Second, Fourth, Sixth, Eighth and Tenth Circuits and the Court of Appeals for the District of Columbia enforce Board orders requiring the employer to cease and desist

in terms identical with paragraph 1 (b) of the order in the instant case where the Board has found that the employer engaged in conduct interfering with, restraining, or coercing employees in the exercise of their right to self-organization.⁷ There is, therefore, a direct conflict between the decision of the Ninth Circuit Court of Appeals in the instant case and the decisions of this Court and of seven other Courts of Appeals.

⁷ See e. g. *National Labor Relations Board v. Reed & Prince Mfg. Co.*, 118 F. 2d 874, 890-891 (C. C. A. 1), certiorari denied, 313 U. S. 595 (8 (1), (3), (5)); *National Labor Relations Board v. Brezner Tanning Co., Inc.*, 141 F. 2d 62, 65 (C. C. A. 1), enforcing 50 N. L. R. B. 894, 896 (8 (1), (3)); *National Labor Relations Board v. Van Deusen*, 138 F. 2d 893, 895-896 (C. C. A. 2) (8 (1), (3)); *National Labor Relations Board v. Air Associates*, 121 F. 2d 586, 592 (C. C. A. 2) (8 (1), (3)); *National Labor Relations Board v. Collins & Aikman Corp.*, 146 F. 2d 454, 456-457 (C. C. A. 4) (8 (1), (3)); *National Labor Relations Board v. Entwistle Mfg. Co.*, 120 F. 2d 532, 536 (C. C. A. 4) (8 (1), (3)); *National Labor Relations Board v. Burke Machine Tool Co.*, 133 F. 2d 618 (C. C. A. 6), enforcing 36 N. L. R. B. 1329, 1347 (8 (1), (5)); *National Labor Relations Board v. Bersted Mfg. Co.*, 128 F. 2d 738 (C. C. A. 6), modifying 124 F. 2d 409, 412 (8 (1), (3)); *Onan v. National Labor Relations Board*, 139 F. 2d 728, 730 (C. C. A. 8) (8 (1), (3)), certiorari denied, No. 814, October Term, 1944; *National Labor Relations Board v. May Department Stores Co.*, 146 F. 2d 66, 71 (C. C. A. 8), certiorari granted, No. 39, October Term, 1945 (8 (1), (5)); *National Labor Relations Board v. Concordia Ice Co., Inc.*, 143 F. 2d 656 (C. C. A. 10), enforcing 51 N. L. R. B. 1068, 1069-1070 (8 (1), (5)); *National Labor Relations Board v. Keystone Freight Lines*, 126 F. 2d 414 (C. C. A. 10), enforcing 24 N. L. R. B. 1153, 1181 (8 (1), (2), (3)); *Bethlehem Steel Co. v. National Labor Relations Board*, 120 F. 2d 641, 647-648 (App. D. C.) (8 (1), (2)).

In the *May* case, *supra*, certiorari granted, No. 39, October Term, 1945, the Circuit Court of Appeals for the Eighth Circuit enforced, with a modification limiting the effect of the order to the employees there involved, a cease and desist order similar to paragraph 1 (b) of the Board's order in the instant case. The *May* case involves a violation of Section 8 (1) of the Act by taking action unilaterally respecting wage increases for its employees without notifying the certified exclusive bargaining representative of the employees in an appropriate unit or giving such representative an opportunity to negotiate respecting such wage increases, and a violation of Section 8 (5) by refusing to bargain collectively with the labor organization certified by the Board as the exclusive bargaining representative of the employees in an appropriate unit. In view of the widespread and diversified nature of the employer's violations here, the conflict with the *May* decision is particularly apparent.

3. The question presented by this action of the Ninth Circuit Court of Appeals is of importance in the administration of the Act. In striking the provisions of the Board's cease and desist order prohibiting future violations identical with or related to those of which the Company was guilty, the court below seriously interfered with the effective administration of the Act. The problem is of special importance because this erroneous construction of the *Express Publishing* decision

is not limited to the Ninth Circuit. The Circuit Courts of Appeals for the Third, Fifth, and Seventh Circuits, which formerly enforced cease and desist provisions identical with paragraph 1 (b) of the instant order, where the employer had interfered with, restrained, or coerced his employees in the exercise of their right to self-organization, have, like the court below, recently refused to enforce such orders.^{*} With four Cir-

^{*} Compare e. g. *National Labor Relations Board v. Phillips Gas & Oil Co.*, 141 F. 2d 304, 306 (C. C. A. 3), enforcing 51 N. L. R. B. 376 (8 (1)) and *National Labor Relations Board v. Weirton Steel Co.*, 135 F. 2d 494, 495-496 (C. C. A. 3), enforcing 32 N. L. R. B. 1145, 1266 (8 (1), (2), (3)) with *General Motors Corp. v. National Labor Relations Board*, decided June 20, 1945, 16 L. R. R. 660 (C. C. A. 3), modifying and enforcing 59 N. L. R. B., No. 205 (8 (1), (3), (5)); *National Labor Relations Board v. Montag Brothers, Inc.*, 140 F. 2d 730, 731 (C. C. A. 5), enforcing 51 N. L. R. B. 366, 367 (8 (1), (3)) and *National Labor Relations Board v. Peyton Packing Co., Inc.*, 142 F. 2d 1009, 1010 (C. C. A. 5), certiorari denied, 323 U. S. 730, enforcing 49 N. L. R. B. 828, 854 (8 (1), (3)) with *National Labor Relations Board v. Lipshutz*, 149 F. 2d 141, 142 (C. C. A. 5), modifying and enforcing 56 N. L. R. B. 1749, 1752-1753 (8 (1)), and the decree entered on June 26, 1945, and opinion of the court on July 30, 1945, on denial of the Board's motion for rehearing, in *Le Tourneau Company of Georgia v. National Labor Relations Board*, Case No. 10954 (C. C. A. 5) after reversal in *National Labor Relations Board v. Le Tourneau Company of Georgia*, decided April 23, 1945, No. 452, October Term, 1944 (8 (1), (3)); *National Labor Relations Board v. Sunbeam Electric Mfg. Co.*, 133 F. 2d 856, 861-862 (C. C. A. 7) (8 (1)) and *National Labor Relations Board v. Faultless Caster Corp.*, 135 F. 2d 559, 562 (C. C. A. 7) (8 (1), (2), (3)), with *National Labor Relations Board v. Servel, Inc.*, decided May 1, 1945, 16 L. R. R. 405 (C. C. A. 7), modi-

culits adopting one policy and seven the contrary policy, clarification of the question by this Court is essential.

II

1. The court below also erred in modifying the back-pay provision (paragraph 2 (b)) of the Board's order by adding to it a proviso to the effect that "as used in this paragraph, the term 'loss' means loss actually incurred, and the term 'net earnings' includes those which the employee could have earned, but has, without excuse, failed to earn." In adding this provision to the Board's order, the court below misinterpreted the holding of the *Phelps Dodge* case and reached a result which is squarely in conflict with that decision and with decisions of other circuit courts of appeals.

In the *Phelps Dodge* case, the Circuit Court of Appeals for the Second Circuit modified the Board's back-pay order by awarding the claimant "the difference between his actual earnings plus what he failed without excuse to earn and the amount he would have earned but for the unfair labor practices" (113 F. 2d 202, 206). This Court, in setting aside that modification, stated: "But though the employer should be allowed to go

fyng and enforcing 57 N. L. R. B. 1383, 1387 (8 (1), (3)) and *National Labor Relations Board v. J. I. Case Co.*, 134 F. 2d 70, 73 (C. C. A. 7), modifying and enforcing, 42 N. L. R. B. 85, 99, decree entered on May 11, 1944, after modification on another point and affirmation in *J. I. Case Co. v. National Labor Relations Board*, 321 U. S. 332 (8 (1), (5)).

to proof on this issue, the Board's order should not have been modified by the court below. The matter should have been left to the Board for determination by it prior to formulating its order and should not be left for possible final settlement in contempt proceedings" (313 U. S. at 200). The Ninth Circuit's decision modifying the Board's order rather than remanding it to the Board for initial determination of any issue as to wilful losses is also in conflict with decisions of other Circuit Courts of Appeals. See *Corning Glass Works v. National Labor Relations Board*, 129 F. 2d 967, 969-973 (C. C. A. 2); *National Labor Relations Board v. Condenser Corp. of America*, 128 F. 2d 67, 78-79 (C. C. A. 3); *National Labor Relations Board v. Sewell Hats, Inc.*, Case No. 10942 (C. C. A. 5), order entered May 19, 1945, remanding to Board for determination of wilful losses incurred and amount of back pay due; *National Labor Relations Board v. Newberry Lumber Co.*, 123 F. 2d 831, 839-840 (C. C. A. 6); *Rapid Roller Co. v. National Labor Relations Board*, 126 F. 2d 452, 461-462 (C. C. A. 7), certiorari denied, 317 U. S. 650; *National Labor Relations Board v. Harbison-Walker Refractories Co.*, 137 F. 2d 596, 597 (C. C. A. 8).

2. The court below also erred in the instant case in entertaining the wilful losses issue. A corollary to the *Phelps Dodge* pronouncement that the wil-

ful losses issue must be "left to the Board for determination by it prior to formulating its order" (313 U. S. at 200) is that the issue must be specifically raised before the Board so as to afford "the Board opportunity to consider on the merits questions to be urged upon review of its order." *Marshall Field & Co. v. National Labor Relations Board*, 318 U. S. 253, 256. In the instant case, the issue of wilful losses was not raised before the Board at any time. Indeed, even in the court below the Company made no allegation that any employee had sustained wilful losses, but merely asked the court to modify the Board's order in that respect. Where, as here, no "extraordinary circumstances" appear to excuse the failure to raise the issue before the Board, the courts cannot entertain it. National Labor Relations Act, Section 10 (e); *National Labor Relations Board v. Baldwin Locomotive Works*, 128 F. 2d 39, 50 (C. C. A. 3); *Marshall Field & Co. v. National Labor Relations Board*, 318 U. S. 253, 255-256; *Corning Glass Works v. National Labor Relations Board*, 129 F. 2d 967, 972-973 (C. C. A. 2). The Ninth Circuit's decision to entertain the wilful losses issue when it had not been raised before the Board is in conflict with the Third Circuit's decision in the *Baldwin Locomotive* case, *supra*, and with this Court's decision in the *Marshall Field* case, *supra*.

CONCLUSION

The questions raised by the decision below are of substantial public importance. The decision conflicts with decisions of this Court and of other circuit courts of appeals. It is respectfully submitted that this petition for a writ of certiorari be granted.

HAROLD JUDSON,
Acting Solicitor General.

ALVIN J. ROCKWELL,
*General Counsel, National Labor Relations
Board.*

AUGUST 1945.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*) are as follows:

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. * * *

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8), affecting commerce. This power shall be exclusive,

and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

* * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.

* * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testi-

mony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 319

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

CHENEY CALIFORNIA LUMBER COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The *per curiam* opinion of the Circuit Court of Appeals (R. II 349)¹ is reported in 149 F. 2d 333. The findings of fact, conclusions of law, and order of the Board (R. I 10-51) are reported in 54 N. L. R. B. 205.

JURISDICTION

The decree of the court below (R. II 350) was entered on March 31, 1945. A petition for rehearing, filed by the Board, was denied on May 14,

¹ "R. I." denotes references to the "Transcript of Record," and "R. II" to the "Supplemental Transcript of Record."

1945 (R. II 351). The petition for a writ of certiorari was filed on August 13, 1945 and was granted on October 22, 1945 (R. II 353). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and on Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

When an employer violates Section 8 (1) and (3) of the National Labor Relations Act by discriminatorily discharging four employees and violates Section 8 (1) of the Act by repeated and varied threats of economic reprisal for union activity and by granting economic benefits in return for abandonment of the union, may the Board properly enter an order which not only requires the employer to cease and desist from discrimination but also to cease and desist from "in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act."

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49

Stat. 449, 29 U. S. C. 151, *et seq.*) are set out in the Appendix, *infra*, pp. 32-34.

STATEMENT

Upon the usual proceedings, the Board on December 30, 1943, issued its findings of fact, conclusions of law, and order (R. I 10-51). The pertinent facts, as found by the Board and shown by the evidence, may be summarized as follows:²

The Company's employees became interested in unionization in the early fall of 1942, a few months after the Company began to operate the Greenville, California, sawmill (R. I 17; 60-61, 115, 126-127). In September of that year, approximately seventeen or eighteen mill employees signed application cards for membership in Lumber and Sawmill Workers, Local 4726, affiliated with the American Federation of Labor, hereinafter referred to as the Union (R. I 17; 126-127, 135).

On or about September 20, 1942, Pease, the general manager of the mill, called a meeting of all employees and urged them not to join a union (R. I 17-18; 127, 135-136, R. II 272-273, 311-312). Pease advised the group that some of the employees would suffer a loss of wages if the men joined the Union and a union scale were adopted (R. I 18; 127, 136, R. II 272-273). After the

² In the following statement, references preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

meeting, one of the employees asked Pease "what he had against the Union". Pease told him that he didn't like unions and that he did not "want a * * * thing to do with them" (R. I 17-18; 128). Another employee, during a conversation with Pease which took place following the meeting, asked him "if he knew what he was doing in regards to fighting the Union", to which Pease replied that "he didn't care much what he was doing" (R. I 20; R. II 281-282).³ Pease also told employee Glenn who was then opposed to the Union, "Glenn, before I would operate under the Union, under the contract, I'd shut the * * * thing down air tight" (R. I 19-20; R. II 313).

Sometime before the seasonal shut-down of the mill in December 1942,⁴ Pease called a second meeting of the employees (R. I 20-21; R. II 273, 319-320), at which the employees decided that their main objective in organizing was seniority (R. I 20-21; R. II 273-274). Pease thereupon told the men that he would grant them seniority rights and asked that a committee of three em-

³ From the context of the above conversation it is clear that the employee was expostulating to Pease that the latter was, by his conduct and statements, violating the "Wagner Act" and that Pease's reply to this expostulation was that he didn't "care much" if he were (R. II 281-282).

⁴ Because of unsuitable weather, the sawmill practically shuts down each season from about December to March (R. I 87-88, R. II 279).

ployees be appointed to "decide which ones should have seniority" and "which ones should have certain jobs" (R. I. 20-21; R. II 273-274, 319-320). The men, in return, informed Pease that they would "just drop the case of the Union" (R. I 20-21; R. II 273-274). The employees appointed a seniority committee which thereafter conferred with Pease (R. I 21; R. II 274, 320-321). Pease submitted to the committee a working agreement which was accepted by the men (R. I 21; R. II 321-322). The employees thereupon abandoned their attempts to achieve self-organization and ceased discussing the Union (R. I 22; 129, 136-137).

When the union movement was revived at the mill in the spring of 1943 (R. I 22, 25; 67-68, 81-83, 143-144, 146-147), employees Ware, Block, and Norberg were among its most outspoken advocates (R. I 25; 68, 96-98, 143-145). Shortly before March 18, 1943 (see R. I 152-153, 157, R. II 289), Foreman Higday accused Norberg, Ware, and Block of "trying to cause trouble" by bringing "the Union in" and advised them to "go some other place" if they "didn't like where [they were] working" (R. I 25-26; 143-144, 146-148). A day or so after this discussion, Pease called Norberg to his office and warned him that he, Block, and Ware were "talking too much," that he was going to dismiss Block and Ware, and that if Norberg did not "stop talking too much

about things," he would have to dismiss Norberg also (R. I 26; 144-145, 148-149, 153). Thereafter, Pease told Norberg's brother that Norberg, Ware, and Block were "doing too much talking," that Ware was "stirring up too much trouble trying to get the men organized," that he was going to discharge Block and Ware,⁵ and that he would discharge Norberg if he "didn't quit talking so much" (R. I 26; II 269-272).

On March 24th and 25th, a majority of the employees signed applications for membership in the Union (R. I 22; 67-68, 82-84). The Union organizer advised Pease of this fact and asked him to negotiate a contract with the Union (R. I 22; 69-71, 83-85, R. II 285). Pease challenged the Union's majority and suggested that the Board conduct an election (R. I 22-23; 70-71, 84-86, R. II 285), but threatened to close the mill before permitting it to "go Union" (R. I. 22-23; 70, 85).

After the Union filed a petition for investigation and certification of representatives pursuant to Section 9 of the Act, the Company agreed to have a consent election conducted at the mill on June 2 (R. I. 24; 73-75, 79, 191-192, 208). On account of protests by Allan and other employees, the date of the election was, however, advanced

⁵ When Ware and Block first returned to work after this announcement, Pease discharged them (R. I 28, 31; 101-106, 153-158). These discharges, which the Board found were discriminatory (R. I 29, 32, 45), are discussed, *infra*, pp. 8-9.

to May 22 (R. I 24, 38; 79-81, 91, 191-192, 208-210). On the eve of the election the Company discharged employees Allan and Glenn* (R. I 24, 39; 196-200, R. II 343-347). Glenn and Allan voted in the election, but their eligibility was challenged by the Company on the ground that they had been discharged for cause (R. I 24, 39; 76-77, 200-201, 257-260, R. II 347), and consequently their votes were segregated and were not counted (R. I 24; 77, 201, 257-260, R. II 347). Without these votes, which were conceded to be in favor of the Union (R. I 259-260), the tally was 16 for the Union and 16 against it (R. I 24; 77, 258).

The Board found that by the anti-union statements and activities of General Manager Pease

* These discharges, which the Board found were discriminatory (R. I 41-45), are discussed, *infra*, pp. 9-10.

⁷ The challenged ballots remained unopened pending a decision by the Board in the instant case. After the Board issued its decision in the instant case, finding that Allan and Glenn had been discriminatorily discharged (*infra*, pp. 9-10), the regional director, on January 4, 1944, opened the challenged ballots, which were for the Union, counted them, and, on February 11, 1944, issued a Consent Determination of Representatives deciding that the Union was the exclusive representative of all the employees in the agreed unit. Thereafter, charges of violation of Sections 8 (1) and (5) were filed with the Board, a new complaint based thereon issued, and on July 10, 1945, the Board issued its decision finding that the Company had violated Section 8 (1) and (5) of the Act and ordered the Company to bargain with the Union. *Matter of Cheney California Lumber Company*, 62 N. L. R. B., No. 160.

and Foreman Higday, the Company interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (1) (R. I 45, 47-48).

Ware had been a member of the American Federation of Labor for about three and one-half years, and he regularly wore a union button while working for the Company (R. I 30; 96-97). Ware and Block were in the forefront of the movement to revive the Union at the mill (*supra*, p. 5). Block joined the Union on March 24, 1943 (R. I 27; 68, R. II 290-291), and Ware signed another designation card for the Union on that date and aided the Union organizer in signing up other employees (R. I 30; 68, 97-98). By their organizational activities, Ware and Block incurred the enmity of Foreman Higday and General Manager Pease, and the latter stated to Norberg and his brother his intention to discharge Ware and Block for their union activities (*supra*, pp. 5-6). Immediately upon their return to work after this announcement, Ware and Block were discharged by Pease (R. I 28, 31; 101-106, 153-158). There is, as the Board found, no evidence in the record to support the reasons assigned by the Company for the discharges of Ware and Block (R. I 28-29, 31-32). The Board found that the Company discharged both Ware and Block because they had engaged in union activities (R. I 29, 32) and that the Company

thereby discouraged membership in the Union in violation of Section 8 (3) and (1) of the Act (R. I 45, 47-48).

Allan was a member of the United Brotherhood of Carpenters and Joiners when he was hired by the Company and he informed Pease of that fact when he reported for work (R. I 36, 38; 179, 187). On April 15th, Allan signed a membership application in the Union and thereafter solicited on its behalf (R. I 38; 187-190). Glenn joined the Union on March 27, 1943 (R. I 34; 160, R. II 314-315) and informed Pease of that fact (R. I 34-35; R. II 315-316). Thereafter, Pease, who had formerly been friendly to Glenn, would pass him without speaking (R. I 35; R. II 318-319). Glenn solicited on behalf of the Union and succeeded in signing up eleven employees (R. I 35; R. II 327-328). He also wore his union button, and Foreman Higday maligned him for doing so (R. I 35-36; R. II 328, 329). On May 19th, the agreement for holding a consent election was signed, and at Allan's request, the time for holding the election was advanced to May 22nd (*supra*, pp. 6-7). At this time also, Glenn was appointed the Union's observer in the forthcoming election (R. I 24, 36; 75). On May 21, Allan and Glenn were discharged (R. I. 39; 196-197, R. II 343). The termination slips issued to them on May 21 or 22 stated falsely that they had "left voluntarily" (R. I 39; 198-200, R. II 346). The Board found that the Company discharged

both Glenn and Allan because of their union activities and in order to influence, adversely to the Union, the election held by the Board to determine the bargaining representative of the Company's employees (R. I 41), and that the Company thereby discouraged membership in the Union in violation of Section 8 (3) and (1) of the Act (R. I 45, 47-48).

The Board ordered the Company to "1. Cease and desist from: (a) discouraging membership in Lumber and Sawmill Workers Local 2647, affiliated with the American Federation of Labor, or in any other labor organization of its employees by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of their employment; (b) in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act." 2. Take the following affirmative action: (a) offer immediate and full reinstatement to the four employees; (b) "Make whole [the four employees] for any loss of pay they have suffered by reason of the respondent's

discrimination against them, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during said period"; (c) post notices; (d) notify the Regional Director for the Twentieth Region what steps the Company has taken to comply with the Board's order (R. I. 11-13).

On May 20, 1944, the Board petitioned the court below for enforcement of its order (R. I. 51-55). The Company having failed to appear, the Board, on February 10, 1945, moved the court below to enter a decree enforcing its order. On March 26, 1945, the Company answered the Board's motion, by proposing certain amendments to the form of decree submitted by the Board. Among the modifications proposed by the Company were the deletion of paragraph 1 (b) of the Board's order and the addition to paragraph 2 (b) of a proviso "to the effect that, as used in that paragraph, the term 'loss' means loss actually incurred, and the term 'net earnings' includes those which the employee could have earned, but has, without excuse, failed to earn."

On March 31, 1945, the court below handed down its *per curiam* opinion and entered a decree modifying the Board's order, *inter alia*, by striking out all of paragraph 1 (b), by adding to

paragraph 2 (b) the words "provided that, as used in this paragraph, the term 'loss' means loss actually incurred, and the term 'net earnings' includes those which the employee could have earned, but has, without excuse, failed to earn," and by striking from paragraph 2 (c) all references to paragraph 1 (b), and enforcing the Board's order as modified (R. II 350).

SPECIFICATION OF ERRORS TO BE URGED

The circuit court of appeals erred:

1. In holding that the Board had no power in the circumstances of this case to enter an order in terms which required the Company to cease and desist from "in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act."

2. In refusing to enforce, and in modifying or setting aside, paragraphs 1 (b) and 2 (c) of the Board's order.

In the petition for a writ of certiorari filed in this case (pp. 12-13, 21-23), we contended that the court below had also erred in modifying paragraph 2 (b) of the Board's order by providing

that, in computing back pay, such amounts as an "employee could have earned but has, without excuse, failed to earn" (R. 349) should be deducted from the amount which the employee "would have earned as wages from the date of his discharge to the date of respondent's offer of reinstatement" (R. II 350). In support of our view, we relied primarily on this Court's holding in *Phelps Dodge Corp v. National Labor Relations Board*, 313 U. S. 177, 200, to the effect that a circuit court of appeals should not, itself, insert such a provision in the decree, but should, instead, leave the matter to the Board for determination by it prior to the formulation of its order. We urged in addition, that the issue of wilful losses had not been raised before the Board and that therefore, no "extraordinary circumstances" being present, the circuit court of appeals could not entertain this issue. Cf. *Marshall Field & Co. v. National Labor Relations Board*, 318 U. S. 253, 255-256.

Since the petition for a writ of certiorari was filed, more intensive study of the printed record in this case and reference to portions of the type-written transcript which are not included in the printed record have raised a question in our minds as to whether the issue was not, in fact, raised before the trial examiner and whether he did not discourage presentation of the issue at that stage of the proceedings (see R. I 112-113). While we still believe that the court below erred in its

action regarding paragraph 2 (b) of the order, we have decided, under the circumstances, not to press this matter in this case.

SUMMARY OF ARGUMENT

The inclusion by the Board of paragraph 1 (b) in its cease and desist order, enjoining the Company from "in any manner interfering with, restraining, or coercing its employees in the exercise of the" rights guaranteed in Section 7 of the Act, was, in the circumstances of this case, an appropriate exercise of the Board's remedial powers. The court below was in error when it deleted paragraph 1 (b) from the order.

The Company, by discriminatorily discharging four employees; by its repeated and varied threats of economic reprisal for union activities; and by granting economic benefits to induce abandonment of the Union, violated Section 8 (1) and (3) of the Act. The broad scope and serious nature of these violations demonstrated the Company's determination to deny its employees all of their rights under the Act by whatever means was necessary to achieve that end. The Company's conduct in actually depriving employees of their livelihood in order to crush organizational activities, as well as its threats of other drastic measures if necessary to defeat self-organization, and its explicit declaration that it did not "care much" that it was violating the statutory rights of its employees, afford a reasonable basis upon

which to apprehend that the Company will commit further unfair labor practices, in unpredictable forms, unless restrained therefrom by court order.

The conduct of the Company as above described fully meets the test for the use of a broad form of cease and desist order laid down by this Court in *May Department Stores Co. v. National Labor Relations Board*, No. 39, this Term, and *National Labor Relations Board v. Express Publishing Co.*, 312 U. S. 426, 432-438, for the Company's unfair labor practices indicated "an attitude of opposition to the purposes of the Act" (*May* slip opinion, p. 13) and were so serious, fundamental, and varied as to bespeak a "threat of continuing and varying efforts to attain the same end in the future" (312 U. S. at 438).

Moreover, the unfair labor practices found in the instant case violate all of the rights guaranteed by Section 7 of the Act. The discharge of employees on the eve of an election in order to prevent the Union from achieving a majority vote not only invaded the employees' right to self-organization, but also violated their right to bargain collectively, and to select representatives of their own choosing. The Company's conduct also invaded the employees' right to engage in concerted action for the purpose of other mutual aid and protection, since the unfair labor practices were directed to the end of preventing the employees from taking any sort of collective ac-

tion on their own behalf. Moreover, the Company's conduct not only interfered with, but also coerced and restrained, its employees in the exercise of those rights.

A restoration of paragraph 1 (b) of the Board's order is necessary in order to enjoin a repetition of the same class of unfair labor practices as have already been committed by the Company.

PRELIMINARY STATEMENT AS TO THE POWER OF THE COURT BELOW TO CONSIDER THE SCOPE OF THE BOARD'S ORDER

In footnote 5 of the opinion in *May Department Stores Co. v. National Labor Relations Board*, No. 39, this Term, decided December 10, 1945, this Court, *sua sponte*, examined into the record in that case to determine whether, under Section 10 (c) of the Act (Appendix, *infra*, p. 34), the circuit court of appeals had the power to review paragraph 1 (b) of the Board's order, a provision identical with that here in question.

It was determined in that case that the Company had taken sufficient objection before the Board to the paragraph in issue, and that, therefore, the circuit court of appeals had power to review its propriety. But in this case, while paragraph 1 (b) was contained in the trial examiner's proposed order (R. I 48), the Company at no time made objection to its provisions before the Board. It may well be, therefore, that the court below was without power to delete paragraph 1 (b) and mod-

ify paragraph 2 (c) by removing all references therein to paragraph 1 (b), and that, for this reason alone, the judgment of the court below should be reversed in this respect.

ARGUMENT

The Board had authority to insert the cease and desist provisions which were stricken from its order by the court below

In the case at bar, the unfair labor practices found to have been committed evinced the Company's determination to frustrate its employees in the exercise of all the rights guaranteed them under the Act. As soon as the employees began to organize, the Company's general manager expressed his opposition to their concerted activities, said he would have no dealings with a union, and threatened to shut the mill "down air tight" rather than operate "under the Union" (*supra*, pp. 3-4). When an employee expostulated that the manager was violating the Act, the latter stated that he did not "care much" what he was doing (*ibid.*). True to this explicit declaration of the Company's purpose to defeat the organizational efforts of its employees regardless of the law, it thereafter resorted to numerous and varied forms of unfair labor practices. The Company granted the employees a seniority system (which it knew to be their main objective in organizing) and thereby, for a time, induced the employees to abandon their organizational activities (*supra*, pp.

4-5). When the union movement was resumed, the Company threatened to discharge the leaders of that movement and when union organization nevertheless achieved some success, the Company threatened to close the mill before permitting it to "go Union" (*supra*, pp. 5-6). When the employees still persisted in their union activities, the Company discriminatorily discharged four of the leading union adherents (*supra*, pp. 8-10). Two of these discharges occurred on the eve of the election held pursuant to the Union's petition for investigation and certification of representatives and were obviously designed to defeat the Union in the election (*supra*, pp. 7, 9-10).

On these facts, the Board properly found that the Company, by its repeated and varied threats of economic reprisal for union activities, its grant of economic benefits to induce abandonment of the Union, and by its discriminatory discharges of four employees, violated Section 8 (1) of the Act, and that, by the discriminatory discharges, it violated Section 8 (3). The Company is thus seen to have violated, not only the specific statutory prohibition against "discrimination in regard to hire or tenure of employment * * * to encourage or discourage membership in any labor organization" (Section 8 (3)), but in addition, by these discharges as well as by other varying forms of conduct, the Act's general proscription embodied in Section 8 (1), against interfering with, restraining, or coercing employees in the exercise

of [the following rights enumerated in Section 7, viz.] "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Pursuant to the mandate of Section 10 (a) and (c) of the Act (Appendix, *infra*, pp. 32, 33),^{*} the Board's order contained two cease and desist provisions—one prohibiting a repetition of violations of Section 8 (3) (R. I. 11), and the other enjoining future violations of Section 8 (1) (R. I. 11-12). Section 8 (1), as we have seen, comprises a general proscription against interference, restraint, or coercion on the part of an employer, against the exercise by his employees of the rights granted in Section 7. The prohibition of this Section is necessarily "broadly phrased," as this Court has said, because "in the nature of things Congress could not catalogue all the devices and stratagems for circumventing the policies of the Act". *Phelps Dodge Corporation v. National Labor Relations Board*, 313 U. S. 177, 194. In framing its cease and desist order in the instant

^{*} Section 10 (a) empowers the Board "to prevent any person from engaging in any unfair labor practice (listed in section 8)," and Section 10 (c) directs the Board to "issue and cause to be served on [any person found to have engaged in any unfair labor practice] an order requiring such person to cease and desist from such unfair labor practice."

case, the Board enjoined further violations of Section 8 (1) in the same broad terms, ordering the Company (R. I. 11-12) to "1. Cease and desist from:"

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

Despite the fact that in this paragraph of its cease and desist order, the Board literally complied with the statutory command to enjoin "such unfair labor practice"—the violation of Section 8 (1)—the court below, in striking the paragraph entirely, deleted from the Board's order all of the prohibitory provisions which were not related to discrimination with respect to employment, thus leaving the Company free to commit any unfair labor practice, other than discrimination, in violation of Section 8 (1) at no risk of violating the court's decree. The authority cited by the court below for its deletion of paragraph 1

(b) is the opinion of this Court in *National Labor Relations Board v. Express Publishing Company*, 312 U. S. 426, 432-438. We respectfully submit that the court below misinterpreted this Court's holding in that case.

In the *Express Publishing* case, the Fifth Circuit Court of Appeals had set aside the Board's finding that the Company had violated Section 8 (1) by making certain statements to its employees. See 312 U. S. at 428, note 1; and 441, note 2, in the dissenting opinion. All that remained to support the Board's order, worded in terms substantially the same as those of paragraph 1 (b) of the order in the instant case, was the finding that the Company had refused to bargain with the Union, thereby violating Section 8 (1) and (5). This Court noted that aside from refusing to bargain with the Union, the Company had "In all other respects * * * consistently left the [Union] and its activities undisturbed" (312 U. S. at 434). It held, therefore, that the violation of Section 8 (5) constituted merely a "technical violation" of Section 8 (1), and that that type of Section 8 (1) violation did not warrant a broad order to cease and desist from violating Section 8 (1) (p. 433). The Court pointed out that (312 U. S. at 434):

The Board made no finding and there is nothing in the record to suggest that the failure of the bargaining negotiations and all that attended them gave any indication that in the future respondent would engage in all or any of the numerous other unfair labor practices defined by the Act.

But here the court below sustained the Board's findings that the Company had discouraged mem-

bership in the Union by discriminatorily discharging four employees. This was not merely a technical violation of Section 8 (1). On the contrary, it was one of the most far-reaching violations of Section 8 (1) that can be envisioned. Thus, prior to the decision in the *Express Publishing* case, the Court of Appeals for the District of Columbia and all of the circuit courts of appeals had uniformly enforced orders containing a provision similar to paragraph 1 (b) of the Board's order herein in every case involving a violation of Section 8 (3) of the Act. The Circuit Court of Appeals for the Second Circuit, in a case in which it expressed doubt as to whether a mere violation of Section 8 (5) would justify such a provision in an order, enforced the provision on the express ground that the case also involved violations of Section 8 (3), pointing out that the discriminatory discharge of employees "was probably the primary wrong against which section 8 (1) * * * was directed."

National Labor Relations Board v. Remington Rand, Inc., 94 F. 2d 862, 869, certiorari denied, 304 U. S. 576, 585.⁹

⁹ See also *National Labor Relations Board v. Willard, Inc.*, 98 F. 2d 244 (App. D. C.); *National Labor Relations Board v. Waumbeec Mills, Inc.*, 114 F. 2d 226, 231, 234 (C. C. A. 1); *National Labor Relations Board v. Somerset Shoe Co.*, 111 F. 2d 681, 691 (C. C. A. 1); *National Labor Relations Board v. Fashion Piece Dye Works*, 100 F. 2d 304 (C. C. A. 3), enforcing 1 N. L. R. B. 285, 290; *National Labor Relations Board v. Washington, Virginia and Maryland Coach Co.*, 85 F. 2d 990 (C. C. A. 4), affirmed, 301 U. S. 142; *Agwilines*,

Since the *Express Publishing* decision, the Circuit Courts of Appeals for the First, Second, Fourth and Tenth Circuits have enforced broad orders in all cases involving violations of Section 8 (3).¹⁰ The Circuit Court of Appeals for the Fourth Circuit has pointed out that such a "blan-

Inc. v. National Labor Relations Board, 87 F. 2d 146, 148, 153. (C. C. A. 5); *National Labor Relations Board v. Kentucky Fire Brick Co.*, 99 F. 2d 89, 91, (C. C. A. 6); *National Labor Relations Board v. Goshen Rubber & Mfg. Co.*, 110 F. 2d 432 (C. C. A. 7); *National Labor Relations Board v. Viking Pump Co.*, 113 F. 2d 759 (C. C. A. 8), certiorari denied, 312 U. S. 680, enforcing 13 N. L. R. B. 576, 592; *National Labor Relations Board v. Star Publishing Co.*, 97 F. 2d 465, 469, 470 (C. C. A. 9); *Southern Colorado Power Co. v. National Labor Relations Board*, 111 F. 2d 539, 541 (C. C. A. 10).

¹⁰ *National Labor Relations Board v. Brezner Tanning Co., Inc.*, 141 F. 2d 62, 65 (C. C. A. 1); *National Labor Relations Board v. Van Deusen*, 138 F. 2d 893, 895-896 (C. C. A. 2); *National Labor Relations Board v. Air Associates*, 121 F. 2d 586, 592 (C. C. A. 2); *National Labor Relations Board v. Sandy Hill Iron & Brass Works*, 145 F. 2d 631 (C. C. A. 2); *National Labor Relations Board v. Collins & Aikman Corp.*, 146 F. 2d 454, 456-457 (C. C. A. 4); *National Labor Relations Board v. Entwistle Mfg. Co.*, 120 F. 2d 532, 536 (C. C. A. 4); *Jacksonville Paper Co. v. National Labor Relations Board*, 137 F. 2d 148 (C. C. A. 5), certiorari denied, 320 U. S. 772; *National Labor Relations Board v. Fairmont Creamery Co.*, 143 F. 2d 668 (C. C. A. 10), certiorari denied, 323 U. S. 752; *National Labor Relations Board v. Armour and Company*, 17 L. R. R. 372, 376 (C. C. A. 10). The Circuit Court of Appeals for the Third Circuit has interpreted the *Express Publishing* decision to require it to omit the broad order where there is no other unfair labor practice than a violation of Section 8 (3) (*National Labor Relation Board v. Newark Morning Ledger Co.*, 120 F. 2d 262/269), although that court enforces broad orders regularly where there are violations of Section 8 (1) much less serious than that involved in Section

ket order" is justified, since "a discriminatory discharge of an employee because of his union affiliations goes to the very heart of the Act." *National Labor Relations Board v. Entwistle Mfg. Co.*, 120 F. 2d 532, 536.

When the discriminatory discharges are considered together with the threats that the Company was not going to deal with the union even if it had to shut down its business, they afford irrefutable basis for apprehending future violations of every right guaranteed by Section 7 unless the hand of the law intervenes. The threats themselves as well as the discharges were aimed specifically not only at the "right to self organiza-

8 (3) violations. *National Labor Relations Board v. Trojan Powder Co.*, 135 F. 2d 337, enforcing 41 N. L. R. B. 1308, 1325, certiorari denied, 320 U. S. 768; *National Labor Relations Board v. Phillips Gas & Oil Co.*, 141 F. 2d 304, 306, enforcing 51 N. L. R. B. 376. The Circuit Courts of Appeals for the Sixth, Seventh and Eighth Circuits have sometimes enforced such orders in such a situation (*National Labor Relations Board v. Bersted Mfg. Co.*, 128 F. 2d 738 (C. C. A. 6), modifying 124 F. 2d 409, 412; *National Labor Relations Board v. Walworth Co., Inc.*, 124 F. 2d 816, 818 (C. C. A. 7); *Wilson & Co., Inc. v. National Labor Relations Board*, 124 F. 2d 845, 848 (C. C. A. 7); *American National Bank of St. Paul v. National Labor Relations Board*, 144 F. 2d 268 (C. C. A. 8), enforcing 52 N. L. R. B. 905, 907) and have, on other occasions, modified the order. *National Labor Relations Board v. Cleveland Cliff Iron Co.*, 123 F. 2d 295, 302 (C. C. A. 6); *National Labor Relations Board v. Sengel, Inc.*, 149 F. 2d 542 (C. C. A. 7); *Wilson & Co. v. National Labor Relations Board*, 123 F. 2. 411, 419-420 (C. C. A. 8). Cf. *Press Co., Inc. v. National Labor Relations Board*, 118 F. 2d 937 (App. D. C.), in which Mr. Justice Rutledge dissented at p. 957.

tion" but also at the "right to form, join, and assist labor organizations", the "right to bargain collectively", and the right "to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection" (R. I 11-12). Consequently, under the principles announced by this Court in the *Express Publishing* decision, paragraph 1 (b) of the Board's order herein should have been enforced in full. For the *Express Publishing* opinion states (312 U. S. at 436-437):

Having found the acts which constitute the unfair labor practice the Board is free to restrain the practice and other like or related unlawful acts. * * * The breadth of the order, like the injunction of a court, must depend upon the circumstances of each case, the purpose being to prevent violations, the threat of which in the future is indicated because of their similarity or relation to those unlawful acts which the Board has found to have been committed by the employer in the past.

Other cases in which this Court had enforced broad cease and desist orders substantially similar to paragraph 1 (b) of the Board's order herein, were distinguished in the *Express Publishing* opinion on the ground that such orders were justified in those cases because (312 U. S. at 437-438):

the record disclosed persistent attempts by varying methods to interfere with the right of self-organization in circumstances

from which the Board or the court found or could have found the threat of continuing and varying efforts to attain the same end in the future.¹¹

While this Court indicated, in the *Express Publishing* case, that a refusal to bargain collectively did not in itself necessarily indicate that the employer would engage in a general attack on the right to self-organization, the converse is not true. A general attack on the right to self-organization is necessarily an interference with the right to bargain collectively. "Union [is] essential to give laborers opportunity to deal on equality with their employer." *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184, 209; *Texas and New Orleans Railroad Co. v. Brotherhood of Railway & Steamship Clerks*, 281 U. S. 548, 570; *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33-34; *Phelps Dodge Corp. v. National*

¹¹ This Court, since issuing that opinion, has enforced cease and desist orders identical with the one here involved where, as in the instant case, the Board had found that the employer had discriminatorily discharged employees or engaged in other conduct interfering with, restraining, or coercing employees in the exercise of their right to self-organization. See *National Labor Relations Board v. Automotive Maintenance Machinery Co.*, 315 U. S. 282, enforcing 13 N. L. R. B. 338, 362; *National Labor Relations Board v. Electric Vacuum Cleaner Co.*, 315 U. S. 685, enforcing 18 N. L. R. B. 591, 640; *National Labor Relations Board v. Nevada Consolidated Copper Corp.*, 316 U. S. 105, enforcing 26 N. L. R. B. 1182. 1235.

Labor Relations Board, 313 U. S. 177, 183. But "such collective action would be a mockery if representation were made futile by interferences with freedom of choice." *Texas & New Orleans Railroad Co. v. Brotherhood of Railway & Steamship Clerks*, *supra*; *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, *supra*, at 34; cf. *Express Publishing* case, *supra*, at 437. In the instant case, the employer's interference with the right to self-organization constituted the plainest sort of interference with the employees' right to bargain collectively. For by discriminatorily discharging two active union adherents on the eve of the election and challenging their ballots at the election (*supra*, pp. 7, 9-10), the Company attempted to prevent the Union from obtaining a majority of the votes cast and sought thereby to deprive the employees of their right to collective bargaining. Consequently, a broad cease and desist provision was justified in the instant case because the Company not only engaged in a general attack upon the employees' right to self-organization but also interfered with their right to bargain collectively.

Finally, it is apparent that by its interference with the right of its employees to self-organization, the Company also transgressed their right to "engage in concerted activities for the purpose of * * * other mutual aid or protection," since the unfair labor practices were directed to

the end of coercing the employees into refraining from any sort of collective action on their own behalf. In this connection, it should be noted that the Company's conduct did not merely "interfere with" the rights of its employees; it was coercive in the extreme, and in addition, as we have seen, "restrained" the employees from the exercise of their rights under the Act. The unfair labor practices in this case consequently encompass the entire range of the language and meaning of Section 8 (1) of the Act.

It is clear, then, that this case, unlike *May Department Stores v. National Labor Relations Board*, No. 39, this Term, is not one in which the violation of Section "8 (1) is so intertwined" with a "refusal to bargain" as to make improper a broad cease and desist order, and that the Company here exhibited an "attitude of opposition to the purposes of the Act to protect the rights of employees generally". Slip opinion, p. 13.

We have shown that the court below, in striking paragraph 1 (b) entirely from the Board's order, deleted *all* of the prohibitory provisions as to those Section 8 (1) violations which did not constitute discrimination with respect to hire and tenure of employment. Consequently, it not merely failed to follow the *Express Publishing* case (312 U. S. at 436-438) by prohibiting future violations of the Act related to past violations and reasonably foreseeable therefrom, but also

failed to prohibit future violations *identical* to those of which the Board and the court had just found the Company guilty. Thereby the court eliminated a cease and desist provision which the Act *requires* the Board to include in its order—namely, one directed to unfair labor practices of which the employer has been found guilty. See National Labor Relations Act, Section 10 (c) (Appendix, *infra*, p. 33); *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265; *Express Publishing* case, *supra*, at 432.

It is thus apparent that restoration of some form of cease and desist provision addressed to future violations of Section 8 (1) is mandatory. For a discussion of the possible alternatives in framing such a cease and desist provision, we respectfully refer the Court to our brief filed with it in *May Department Stores v. National Labor Relations Board*, No. 39, this Term, pp. 42–61. Suffice it to say here that the Company has manifested a determination generally to flout the statutory rights of its employees, and that the type of order adopted by this Court in the *May* case, protective of the union alone, would be inadequate in this case since the Company's interference, restraint, and coercion were directed primarily at the employees themselves and not at the Union alone through a refusal to bargain. The inference is inescapable that the commission of further unfair labor practices by the Company, in unpre-

dictable forms, is reasonably to be expected in the event that its employees should again attempt to exercise their rights under the Act. In the face of this reasonable probability, nothing but a broad cease and desist order such as is embodied in paragraph 1 (b) of the Board's order herein would be sufficient to protect the Company's employees in the enjoyment of those rights. To enjoin merely a repetition of the specific forms of unfair labor practices hitherto committed would put a premium on the ingenuity of the Company in devising different methods of attaining its demonstrated and tenacious purpose of thwarting its employees in the exercise of their rights under this Act.

In our brief in the *May* case, *supra*, we discuss the enervating consequences on the Act in cases of this sort were the Board to be required to limit its cease and desist orders to prohibitions of the identical unfair practices previously committed. For that discussion we respectfully refer the Court to pp. 47-49 of the *May* brief. Similarly, to avoid repetition, we shall not here discuss the cases decided under other statutes which provide for the use of injunctive orders, and the administrative practice of other agencies, but shall, instead, refer to pp. 49-52 of the *May* brief and the opinion of this Court in that case. Pp. 11-12 of the slip opinion.¹²

¹² See also the breadth of the injunction sustained by this Court in *Hague v. C. I. O.*, 307 U. S. 496, 517, under general equity principles.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court below, insofar as it fails to enforce and modifies the order of the Board by striking therefrom paragraph 1 (b) and all references in paragraph 2 (c) to paragraph 1 (b), should be reversed, and the cause remanded with directions to enforce these provisions of the order.

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National Labor Relations Board.

DECEMBER 1945.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. Sec. 151, *et seq.*) are as follows:

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. * * *

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means

of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

* * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.

* * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in

such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

SUPREME COURT OF THE UNITED STATES.

No. 319.—OCTOBER TERM, 1945.

National Labor Relations Board,
Petitioner,

vs.

Cheney California Lumber
Company.

On Writ of Certiorari to
the United States Circuit
Court of Appeals for the
Ninth Circuit.

[February 25, 1946.]

Mr. Justice FRANKFURTER delivered the opinion of the Court.

Cheney California Lumber Company, the respondent, operated a sawmill at Greenville, California. Some employees of the Company were members of Lumber and Saw Mill Workers, Local 4726, affiliated with the American Federation of Labor. The union complained to the National Labor Relations Board that the Company had engaged in unfair labor practices, in violation of § 8 of the Wagner Act, 49 Stat. 449, 452, 29 U. S. C. § 158. Following the usual procedure, there was a hearing before a trial examiner who made an intermediate report, including specific recommendations for a cease-and-desist order. The Company filed no exceptions to this report, nor did it request an oral argument before the Board. Upon due consideration, the Board adopted the findings, conclusions, and recommendations of the trial examiner. 54 N. L. R. B. 205. Thereupon the Board asked the Circuit Court of Appeals for the Ninth Circuit to enter a decree upon its order. The Company then proposed modifications of the Board's order, which were granted by the court below. 149 F. (2d) 333. The Government petitioned for *certiorari*, urging that one of the changes made by the Circuit Court of Appeals was based on a misconception of *Labor Board v. Express Pub. Co.*, 312 U. S. 426, as to the allowable scope of the Board's power "to effectuate the policies" of the Act. § 10(c), 49 Stat. 454, 29 U. S. C. § 160(c). So we brought the case here. 327 U. S. — Upon the argument, this was the only modification to which the Government objected. We shall not consider the others. The court below struck out from the Board's order paragraph 1(b) whereby the Company was ordered, after appropriate treatment of the unfair labor prac-

tice arising from prohibited discharge of employees, to cease and desist from

“(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.”

The court found warrant for its excision of this provision in *Labor Board v. Express Pub. Co.*, *supra*. That case, however, recognized that it was within the power of the Board to make an order precisely like 1(b). It merely held that whether such an inclusive provision as 1(b) is justified in a particular case depends upon the circumstances of the particular case before the Board. See 312 U. S. at 433, 437-38. Here the trial examiner recommended the inclusion of 1(b) on the basis of his review of past hostilities by the company against efforts at unionization; no exception was made either to the findings or to this recommendation; upon full consideration of the record the Board adopted the trial examiner's recommendation; no objection was raised by the Company until after the Board sought judicial enforcement of its order. The objection came too late.

When judicial review is available and under what circumstances, are questions (apart from whatever requirements the Constitution may make in certain situations) that depend on the particular Congressional enactment under which judicial review is authorized. Orders of the National Labor Relations Board are enforceable by decrees of circuit courts of appeals. In such an enforcement proceeding, a court of appeals may enforce or modify or set aside the Board's order. § 10(e), 49 Stat. 454, 29 U. S. C. § 160(e). Since the court is ordering entry of a decree, it need not render such a decree if the Board has patently traveled outside the orbit of its authority so that there is, legally speaking, no order to enforce. But the proper scope of a Board order upon finding unfair labor practices calls for ample discretion in adapting remedy to violation. We have said that “in the nature of things Congress could not catalogue all the devices and stratagems for circumventing the policies of the Act. Nor could it define the whole gamut of remedies to effectuate these policies in an infinite variety of specific situations. Congress met these difficulties by

leaving the adaption of means to end to the empiric process of administration. The exercise of the process was committed to the Board, subject to limited judicial review." *Phelps Dodge Corp. v. Labor Board*, 313 U. S. 177, 194.

A limitation which Congress has placed upon the power of courts to review orders of the Labor Board is decisive of this case. Section 10(e) of the Act commands that "No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances." We have heretofore had occasion to respect this explicit direction of Congress. *Marshall Field & Co. v. Board*, 318 U. S. 253; and see *May Department Stores Co. v. Labor Board*, decided December 10, 1945, slip opinion, p. 8, n. 5. By this provision, Congress has said in effect that in a proceeding for enforcement of the Board's order the court is to render judgment on consent as to all issues that were contestable before the Board but were in fact not contested. Cf. *Pope v. United States*, 323 U. S. 1. We can say of this case, as was said of the *Marshall Field* case, *supra*, that it "gives emphasis to the salutary policy adopted by § 10(e) of affording the Board opportunity to consider on the merits questions to be urged upon review of its order." *Marshall Field & Co. v. Board*, *supra*, at 256. The appropriateness of such a prohibition as the Board's order contains depends, as the *Express Publishing Company* case, *supra*, abundantly shows, upon evidence found by the Board disclosing a course of conduct against which such an order may be the only proper remedy. The Board here so found. Justification of such an order, which necessarily involves consideration of the facts which are the foundation of the order, is not open for review by a court if no prior objection has been urged before the case gets into court and there is a total want of extraordinary circumstances to excuse "the failure or neglect to urge such objection." Congress desired that all controversies of fact, and the allowable inferences from the facts, be threshed out, certainly in the first instance, before the Board. That is what the Board is for. It was therefore not within the power of the court below to make the deletion it made.

Judgment reversed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES.

No. 319.—OCTOBER TERM, 1945.

National Labor Relations Board,
Petitioner,
vs.
Cheney California Lumber
Company.

On Writ of Certiorari to the
United States Circuit Court
of Appeals for the Ninth
Circuit.

[February 25, 1946.]

Mr. Chief Justice STONE, concurring.

I concur on a ground which the Court's opinion points out and which is alone sufficient to sustain its decision, namely, that the court below erroneously applied *Labor Board v. Express Pub. Co.*, 312 U. S. 426. But I cannot say that when the court below was appealed to as a court of equity to enforce by its injunction the Board's order, § 10(e) of the National Labor Relations Act rendered the court powerless to frame its own injunction consistently with the record, on which that section requires it to act, and in conformity to accepted principles governing the scope of the injunction; or that if the tables were turned the section would require the reviewing court to repeat, by the excessive scope of its injunction, the very abuse of power condemned by the *Express Publishing Company* case.

The prohibition by § 10(e) of the court's consideration of objections which the parties did not urge before the Board is a limitation upon the court's review of the grounds for granting or denying relief. This Court has treated it as such. See *Marshall Field & Co. v. Board*, 318 U. S. 253. But we have not held that § 10(e) could, and I think it cannot rightly, be construed to be also a limitation on the court's power to conform its own process to accepted legal standards applied to the "entire record" which § 10(e) requires to be filed with it. Nor is that prohibition a command to the court to act as a mere ministerial agency to execute the order of the Board, without regard to those standards which control the court's use of its own process, even though the Board and the parties have ignored them.

Only recently we have held that the imposition of a mandatory duty on a federal court of equity to restrain violations of a statute is not to be taken as depriving the court of its traditional power to administer its remedies according to its own governing principles and in conformity to the standards of public interest. See *Hecht Co. v. Bowles*, 321 U. S. 321, 331. In that case we held that a command explicitly addressed to a court of equity, by § 205(a) of the Emergency Price Control Act of 1942, to grant an injunction enforcing the act when violation of it is shown, did not deprive the court of its equitable discretion to grant or withhold an injunction. It has been well said that § 205(a), which directs that the court upon showing of violation "shall" grant the injunction, "does not change the historic conditions for the exercise by courts of equity of their power to issue injunctions." 321 U. S. 331.

It should likewise be held that the present statute does not alter the power of a court of equity to frame its injunction according to equitable principles applied in the light of the record on which it must act. Here the statute is not mandatory. It does not purport to curtail the court's power to define the scope of its process. The section only confers on the court the power to make "a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board". This emphasizes what was implicit in the statute involved in the *Hecht* case, and made explicit by the opinion, that when a statute authorizes an appeal to equity to enforce a liability created by statute, the exercise is invoked of those powers which pertain to it as a court of equity. This at least includes the power to fix, on its own motion, the scope of the decree which it may be required to enforce by contempt proceedings, in conformity to recognized equitable standards applied to the record before it.